

**IN THE MATTER OF APPEAL PROCEEDINGS BEFORE THE JUDICIAL
COMMISSIONER, THE HON MICHAEL J BELOFF QC, PURSUANT TO THE
INTERNATIONAL CRICKET COUNCIL CODE OF CONDUCT FOR PLAYERS AND
PLAYER SUPPORT PERSONNEL**

DINESH CHANDIMAL (APPELLANT)

V.

INTERNATIONAL CRICKET COUNCIL ('ICC') (RESPONDENT)

AWARD

1. INTRODUCTION

1.1 This is an appeal to me, sitting as a Judicial Commissioner ("Commissioner"), brought on 20th June 2018 by Dinesh Chandimal, the Captain of the Sri Lankan Test team ("the Appellant") against a decision dated 19th June 2018 ("the Decision") of Javagal Srinath, the Match Referee, for the Sri Lanka v West Indies Test Match in St Lucia ("the Match") that, during the Match on 15th June 2018, the Appellant breached Article 2.2.9 of the ICC Code of Conduct ("the Code") ("Changing the condition of the ball in breach of Law 41.3 of the ICC Standard Test Match, ODI and T20I Playing Conditions") by applying an artificial substance to the match ball ("the Offence") - in the vernacular, ball tampering - and in consequence fined him 100% of his Match Fee and two suspension points to be applied with immediate effect ("the Sanction").

1.2 Neither my jurisdiction nor the admissibility of the appeal are disputed. The appeal proceeds *de novo* (Code Article 8.2.3¹). The burden lies upon the ICC to prove that

¹ With the consequence that I need not concern myself with the various criticisms by the Appellant about how the Match Referee allegedly handled his case and accordingly I make no findings on them.

the Appellant committed the Offence (Code Article 6.1). The standard of proof under the Code is that of comfortable satisfaction (Code ditto), which is more stringent than the ordinary civil standard but less stringent than the criminal standard (*Wang v FINA CAS 98/2008 para 5.6*).

1.3 In making my award I am not bound by judicial rules governing the admissibility of evidence; and the facts relied on may be established by any reliable means, including admissions (Code Article 6.2).

1.4 The law applicable to the Code is English law (Code Article.10.5).

2. THE BACKGROUND FACTS

2.1 The Match between the West Indies and Sri Lanka began at Gros Islet, St Lucia on the 14th of June 2018. The Appellant was Captain of the Sri Lankan team.

2.2 It is alleged in the Decision that on the second day of the Match at about 2.43 p.m., the Appellant *“upon receiving the ball he dug around in his pocket to find something which he then put into his mouth. After sucking or chewing whatever he put in his mouth for a few seconds Mr. Chandimal then proceeded to spit on his finger and polish the ball with his saliva which would have contained the residue of the Artificial substance which he had in his mouth on two separate occasions”*. (The Appellant says that he had in his pocket Strepsils (a throat sweet) for therapeutic purposes and almonds for energy. He could not, however, recollect which he chewed on that occasion).

2.3 Subsequent to that occasion, the ball was in the possession of the Umpires during the tea interval, the times immediately after wickets fell, drinks breaks and at the close of play, at all of which times they duly inspected the condition of the ball. However at no time during the course or at the close of play on the second day did the umpires note, indicate or inform anybody that the condition of the ball had changed.

2.4 The Umpires were only made aware of the TV footage said to be suggestive of the Offence at or about 8.30am on the third day of the Match and only saw the footage shortly thereafter, forming then the view that it indicated that the Appellant had

breached Article 2.2.9 of the Code. They orally informed the Match Referee of their view.

- 2.5 As a result, ten minutes before the commencement of play, the Match Referee for his part informed the Sri Lanka Team Officials and the Appellant that the Umpires had discovered TV footage said to indicate such a breach.
- 2.6 Immediately upon becoming aware of that allegation against the Appellant the Sri Lankan team delayed taking the field, and it was only after several prolonged discussions that play commenced two hours after the scheduled start time.
- 2.7 Upon the commencement of play the Umpires informed the Appellant that five penalty runs would be awarded to the batting side, i.e. the West Indies, and that the ball would be changed. The Sri Lanka team again objected.
- 2.8 The events referred to in the two preceding sub-paragraphs are the subject of separate proceedings under the Code and for present purposes it is not necessary or indeed appropriate for me to comment further on them in this Award.
- 2.9 The Umpires' written match report was only formally provided to the Match Referee at midday of the third day.
- 2.10 At the end of play on the third day the Match Referee duly charged the Appellant with the Offence.
- 2.11 At the disciplinary hearing held after close of play on the fifth day of the Match, the Appellant's defence was presented to the Match Referee by the Appellant and Mr. Gurusinha, the manager of the Sri Lanka team.
- 2.12 In the Decision, on the basis of the video footage (and rejecting the Appellant's defence) the Match Referee held that the Appellant was guilty of an offence pursuant to Article 2.2.9 of the Code and Clause 41.3 of the ICC Standard Test Match, ODI and T20I Playing Conditions ("the Test Match Conditions") and imposed the Sanction.

2.13 On 22nd June 2018, sitting in London, I held a hearing by video conference. The Appellant was in Barbados, Counsel for the ICC were in Dubai (Ms Clark) and London, (Jonathan Taylor QC and Max Latchmore) and Counsel for the Appellant (Mr Chandak Jayasundere, President's Counsel and Mr Pulasthi Rupasinha, Attorney-at-Law) were in Colombo. I am grateful to all lawyers involved for their helpful written submissions and impressive oral presentation, and for their collaboration in overcoming the inevitable technical difficulties which accompany such a transcontinental hearing.

2.14 The evidence before me consisted of (i) video footage of the incident said to constitute the Offence, (ii) the Umpires' Reports to the Match Referee, (iii) the Decision itself, which summarises the Appellant's explanation to the Match Referee of the incident in question (but is itself hearsay); and (iv) direct oral testimony by video-link from the Appellant himself. As will appear hereafter, items (i) and (iv) were the most relevant and useful.

3. THE ISSUES

3.1 The following appear, in the light of the parties' respective submissions, to be the main questions posed for my resolution:

- Does the fact that the Umpires filed their report of the alleged Offence after the deadline specified in Article 3.2.1.1 of the Code invalidate the subsequent disciplinary procedure? ("Validity"); What are the elements of an offence under Article 2.2.9 of the Code of Conduct? ("The Offence-Law");
- Does the evidence establish each of those elements of the Offence to the requisite standard of proof? ("The Offence-Fact");
- If so, what is the appropriate sanction for the Offence in all the circumstances of this case? ("Sanction").

3.2 I shall consider the questions in that order.

4. VALIDITY

4.1 At the core of the Appellant's argument presented by his Leading Counsel was the proposition that identification of an on field offence by the umpires itself must itself take place on field and that there is moreover a strict limit for a report alleging such

offence. I was invited to read the two relevant provisions, set out in the next two sub paragraphs and around which the forensic debate pivoted, as supporting that proposition, and as requiring what he described as a step by step approach by which any alleged ball tampering must be addressed in sequence so that failure properly to take one step invalidates what happens thereafter.

4.2 Clause 41 of the Test Match Conditions provides, so far as material:

41.3 The match ball – changing its condition

41.3.1 The umpires shall make frequent and irregular inspections of the ball. In addition, they shall immediately inspect the ball if they suspect anyone of attempting to change the condition of the ball, except as permitted in clause 41.3.2.

41.3.2 It is an offence for any player to take any action which changes the condition of the ball.

Except in carrying out his normal duties, a batsman is not allowed to wilfully damage the ball other than, when the ball is in play, in striking it with the bat. See also clause 5.5 (Damage to the ball).

A fielder may, however:

41.3.2.1 polish the ball on his clothing provided that no artificial substance is used and that such polishing wastes no time.

41.3.2.2 remove mud from the ball under the supervision of an umpire.

41.3.2.3 dry a wet ball on a piece of cloth that has been approved by the umpires.

41.3.3 The umpires shall consider the condition of the ball to have been unfairly changed if any action by any player does not comply with the conditions in clause 41.3.2.

41.3.4 If the umpires together agree that the condition of the ball has been

unfairly changed by a member or members of either side, or that its condition is inconsistent with the use it has received, they shall consider that there has been a contravention of this clause and decide together whether they can identify the player(s) responsible for such conduct.

41.3.5 If it is possible to identify the player(s) responsible for changing the condition of the ball, the umpires shall:

41.3.5.1 Change the ball forthwith.

41.3.5.1.1 If the umpires together agree that the condition of the ball has been unfairly changed by a member or members of the fielding side, the batsman at the wicket shall choose the replacement ball from a selection of six other balls of various degrees of usage (including a new ball) and of the same brand as the ball in use prior to the contravention.

41.3.5.1.2 If the umpires together agree that the condition of the ball has been unfairly changed by a member or members of the batting side, the umpires shall select and bring into use immediately, a ball which shall have wear comparable to that of the previous ball immediately prior to the contravention.

41.3.5.2 Additionally, the bowler's end umpire shall:

- award 5 penalty runs to the batting side.
- if appropriate, inform the batsmen at the wicket and the captain of the fielding side that the ball has been changed and the reason for their action.
- inform the captain of the batting side as soon as practicable of what has occurred.

The umpires shall then report the matter to the ICC Match Referee who shall take such action as is considered appropriate against the player(s) concerned...." (emphasis added).

4.3 Article 3.2.1 of the Code of Conduct provides, so far as material:

3.2.1 Where the *Report*² is lodged by any of the individuals described in Articles 3.1.1 or 3.1.2³ in relation to:

3.2.1.1 a *Level 1 Offence* or a *Level 2 Offence* that is alleged to have been committed on the field of play during an *International Match*, then the *Report* must be lodged with the *Match Referee* (...) (a) where the *Report* is lodged by an *Umpire*, within eighteen hours of the close of the day's play in the relevant *International Match* or **prior to the start of the following day's play** or the start of the next relevant *International Match*, whichever is the sooner ..." (emphasis added).

4.4 Stripped to its essential elements, the contention advanced on behalf of the Appellant was that Clause 41 is throughout concerned with what occurs within the confines of a day's play. Any offence of unfairly changing the condition of the ball, a level 2 offence, must be identified within that time frame (which it was not - the Umpires only purported to make such identification after seeing the TV footage early the next day) ("the first limb") and the highlighted passage in the Code obliges the Umpires to make a written report to that effect to the Match Referee no later than before the start of the next day's play (which also it was not - the Match Referee only received the said document at 12 noon on the 16th of June 2018, i.e. after the commencement of that day's play) ("the second limb"). Accordingly, essential preconditions for the institution of disciplinary proceedings were lacking, and the Decision was therefore a nullity.

4.5 Stripped to its essential elements, the contention advanced on behalf of the ICC was that, as to the first limb, while doubtless the paradigm case contemplated by Clause 41 is that there is on field identification of such offence, there is nothing in the Clause which prohibits such identification thereafter and that, as to the second limb, the highlighted passage in the Test Match Conditions obliges the Umpires to make a report to the Match Referee only after taking what are obviously more urgent steps, i.e. changing the ball, awarding penalty runs etc. as set out in Clause 41.3.5, which was exactly what the Umpires in fact did. Leading Counsel for the ICC conceded that there was at first sight a tension between the two provisions but argued that the Clause as a

² Which must be in writing: Code Article 3.2.

³ Which include the Umpire: Code Article 3.1.1.

lex specialis (concerned only with changing the condition of the match ball) trumped the Article as a lex generalis (concerned with all on field Level 1 or 2 Offences)⁴. Furthermore he submitted that in any event nowhere does the Code say that a late-filed Umpire's Report is invalid and cannot be considered on its merits, and it would be inimical to the interests of the game so to construe it unless (which it was not) the language were compulsive to the effect.

4.6 As to the first limb, I agree with the ICC that there is nothing in the language of Clause 41 which restricts the Umpires from identifying actions said to amount to ball tampering after conclusion of the day's play during which it is said to have occurred; the normal must not be confused with the necessary. The fact that the Umpires' report may be provided to the Match Referee "before the commencement of the following days play" is, in my view (and contrary to the ICC's argument) itself neutral as to when the incident reported on had to be identified by them; but I readily accept that it would be bizarre if simply because the alleged ball tampering was not identified by the Umpires on the same day it was said to have occurred, the perpetrator could ipso facto walk away scot free, especially if, as here, there was no fault on the part of the Umpires in not detecting contemporaneously the incident which gave rise to the charge. Umpires cannot be omniscient.

4.7 As to the second limb, I agree with the ICC that Clause 41.3.5 is a lex specialis which was here complied with. But I consider also that, even on the assumption that (i) Article 3.2.1.1 is the relevant provision, (ii) it imposes a duty, not a discretion, (iii) a belated provision of the Umpire's report is prima facie a breach of that duty, (iv) (contrary to the ICC's secondary argument) the Match Referee cannot extend the prescribed time limit, it would not follow that the consequence of such breach is that the Match Referee is prevented from taking any subsequent action, however compelling the evidence of ball tampering may be.

4.8 In my view it is indeed highly significant that the Code itself makes no provision as to what is to be the consequence of breach of that obligation. In particular, no Article stipulates that a delay, contrary to the timetable set out in the Code, in provision of the Report to the Match Referee invalidates (indeed prohibits) any disciplinary proceedings thereafter. Where a regulatory scheme does not spell out the consequences of failure to

⁴ See as to the principle invoked *Vinus v Arms & Spencer plc* 20001 3All ER 784 per Peter Gibson LJ at para 27.

observe one of its prescriptions, it is necessary under English law to determine as a matter of construction of the scheme whether that failure is to be regarded as mandatory, so that compliance is a necessary precondition of further action, or directory, so that non-compliance is to be treated as a mere irregularity (see discussion in De Smith Judicial Review 7th ed paras 5.052-5-064). In my view the non-compliance relied on by the Appellant falls into the latter category. The same approach, antithetical to a technical defence of the kind here advanced, is vouched for in a series of CAS cases.⁵

4.9 I endorse the ICC's argument set out in its skeleton argument that "the public interest in proper enforcement of the rules, and the pressing need for equal treatment of players who break the rules, mitigates strongly against dismissal, and in favour of proceeding to the merits". In my view dismissal of a well-founded charge of ball tampering for no reason other than that an umpire's report alleging the same was given to the Match Referee a few hours later than provided for in the Code cannot have been contemplated by those who drafted it. The Appellant's contentions with the emphasis on the single word "must" in Article 3.2.1.1 elevates form over substance and prioritises language over purpose.

4.10 I would add that the Umpires acted with celerity once apprised of the incident which has given rise to the charge; the delay in provision of their report to the Match Referee has not affected in any way the quality of the evidence relied on in support of that charge; and no prejudice to the Appellant in terms of the mounting of his defence has been and could realistically be identified.

5. THE OFFENCE-LAW

5.1 Article 2.2.9 of the Code of Conduct describes the offence as follows: 'Changing the condition of the ball in breach of clause 41.3 of the ICC Standard Test Match, ODI and T20I Playing Conditions'. Clause 41.3 of the Test Match Conditions (cited at para 4.2 above) is therefore incorporated by reference into Article 2.2.9.

5.2 The Guidance Note to Article 2.2.9 of the Code of Conduct (which is an admissible aid to instruction) (Comment on Article 2 of the Code) provides, so far as material, as follows:

⁵ UCI v Ulrich CAS 2010/A/2083 para 32(b).

“NOTE: This offence supplements and does not replace ICC Standard Test Match, ODI and T20I Playing Conditions clause 41.3.

Any action(s) likely to alter the condition of the ball which were not specifically permitted under clause 41.3.2 may be regarded as ‘unfair’. The following actions shall not be permitted (this list of actions is not exhaustive but included for illustrative purposes): (a) deliberately throwing the ball into the ground for the purpose of roughening it up; (b) applying any artificial substance to the ball; and applying any non-artificial substance for any purpose other than to polish the ball; (c) lifting or otherwise interfering with any of the seams of the ball; (d) scratching the surface of the ball with finger or thumb nails or any implement.

The Umpires shall use their judgment to apply the principle that actions taken to maintain or enhance the condition of the ball, provided no artificial substances are used, shall be permitted. Any actions taken with the purpose of damaging the condition of the ball or accelerating the deterioration of the condition of the ball shall not be permitted”.

5.3 It is contended on behalf of the Appellant that it is a sine qua non of the Offence not only that the player takes unfair action but that the action actually alters the condition of the ball, i.e. that there are two constitutive elements of the Offence, not one only.

5.4 In order to explore whether this analysis is exhaustive, it is necessary to set out again the key provisions of Test Match Conditions clause 41.3 relevant to the charge, namely:

“41.3.2 It is an offence for any player to take any action which changes the condition of the ball.

.....

A fielder may, however:

41.3.2.1 polish the ball on his clothing provided that no artificial substance is used

41.3.2.2

41.3.2.3

41.3.3 The umpires shall consider the condition of the ball to have been unfairly changed if any action by any player does not comply with the conditions in clause 41.3.2.”

5.5 In my view Article 41.3.2 (i) prohibits any player from (a) taking any action which (b) changes the condition of the ball (which is consistent with the Appellants’ overriding submission); and (ii) permits a fielder to polish the ball on his clothing but only if no artificial substance is used (which is not inconsistent with it).

5.6 What is, however, inconsistent with the Appellant's submission, indeed fatal to it, is Clause 41.3.3. This consists of first a premise, albeit located at the end of the sentence, i.e. the non-compliance by a player with the conditions in Clause 41.4.2, e.g. (materially) polishing the ball on his clothing with an artificial substance, and second a conclusion obliging the umpires, if that premise is satisfied, to consider that the condition of the ball has been changed.

5.7 The Appellant contends that Article 41.3.3 creates only a rebuttable presumption, i.e. even if the premise is satisfied, the Umpires can still e.g. by their inspection of the ball consider that the condition of the ball has not been unfairly changed thereby, or indeed changed at all.

5.8 Even bearing in mind the contra proferentem rule that any ambiguity in the Code which may give rise to disciplinary proceedings must be construed in a manner most favourable to the potential object of such proceedings, I find that contention unsustainable whether looked at from the perspective of language or of purpose. Article 41.3.3 is not phrased as a presumption but as a prescription. Furthermore my preferred construction is rooted in reality and corresponds to common sense. Every polishing of a ball changes its condition; that is why a polished ball behaves to a greater or lesser degree differently than it would if it were not polished; and that is indeed why, as the Appellant himself, a highly experienced cricketer, readily agreed in evidence, players polish match balls.

5.9 The Code’s concern is not with the difference between changing and not changing the condition of the ball by polishing it, but with the difference between doing so fairly or unfairly. If, for example, sandpaper is used on a match ball, it may be that the ball shows visible signs of its application; but in the kind of alleged use of an artificial

substance with which I am here concerned, such signs, if ever visible, will certainly have disappeared after the ball has been in regular contact with the pitch. Article 41.3.3, construed as I consider it should be, is therefore entirely intelligible. It is when an artificial substance is used to polish the ball that the Rubicon is crossed.

- 5.10 My analysis is further supported by the Guidance Note to Article 2.2.9 of the Code, quoted in sub paragraph 5.2 above, which is expressly stated to be supplementary to, and hence not subversive of Test Match Conditions Clause 41.3. The first portion of the Note elaborates on what may be considered 'unfair' actions likely to alter the condition of the ball, some of which (e.g. scratching it) may leave visible marks on its surface, others which may not. The second portion of the Note by implication enjoins umpires not to permit any use of artificial substances to maintain or enhance the condition of the ball. The Guidance therefore also assumes that **any** such use of an artificial substance does change the condition of the ball.
- 5.11 In articulating my conclusions in this way in response to the particular and fresh arguments skillfully advanced on the Appellant's behalf, I do not intend to retreat from or modify in any way the analysis which I made of Law 42.3 (the predecessor of clause 41.3 of the Test Match Conditions) in my ruling in *Du Plessis v ICC* (21 December 2016) ("*Du Plessis*") paras 4.9-4.16. That ruling does not, of course, bind me and I would have been open, if so persuaded, to have second thoughts about it. However in the event I am not, as already explained, so persuaded.
- 5.12 The sole remaining question of law germane to this appeal is what is meant by an artificial substance. As I said in *Du Plessis* para 4.17 "As to what is an artificial substance, neither Code, Law nor Guidance define it. The adjective "artificial" is ordinarily used as the opposite of natural. The Oxford English Dictionary defines it as "made or produced by human beings rather than occurring naturally" which the Appellant was prepared to accept. There is nothing in the regulatory context to require, in my view, any alternative or different definition".
- 5.13 The ICC suggests that natural in this context means that which "occurs naturally in the human body". I doubt that this is an all-purpose acceptable gloss and can envisage issues arising if it was argued in some future case that mucus or blood, which might fall within that definition, could lawfully be used to polish a ball.

5.14 It is therefore better in my view to concentrate on the adjective which is used in the Code, i.e. 'artificial', than on its antonym, which is not. The use of nothing but sweat or saliva to polish a ball is clearly permitted but, beyond that, I consider it sufficient to say that if a sweet (whether cough sweet or bon bon) or a nut is chewed, its residue in the context of the Code is to be treated as artificial, being (if such exegesis is required) made or produced by a player by the process of mastication.

6. THE OFFENCE -FACT

6.1 On any view the video footage, albeit only 42 seconds in length, was the best evidence of what occurred at 2.43pm on the second day of the match. The ICC said this about it in their skeleton argument: "The video footage ... shows clearly that on the afternoon of the day in question, while the West Indies were batting, at the end of an over the Sri Lankan wicket-keeper threw the match ball to his captain, the Appellant, who then very deliberately dug around in his trouser pocket to locate something, took it from his pocket, and put it into his mouth. After sucking and/or chewing whatever he had put in his mouth for a few seconds, the Appellant then very deliberately spat twice on the ring finger of his right hand.⁶ He then rubbed a spot on the shiny side of the ball with that finger, and then polished the ball vigorously on his trouser leg, before throwing it to the next bowler."

6.2 Having looked at the footage on several occasions, I concur with that description of what it shows but am further prepared to accept the Appellant's evidence that he did not (unlike Mr Du Plessis) put his finger in his mouth (although, like the Match Referee, I cannot conceive that this particular distinction between the two cases is of any importance).

6.3 The Appellant's spit accordingly contained an artificial substance, the residue of whatever it was he took out on his pocket and chewed (Strepsil or almond - which it was for this purpose matters not).

6.4 Was this, as the Appellant's counsel argued, pure coincidence or (assuming that mens

⁶ The first time, he might instead have put his finger into his mouth (the view on the video is obscured).

rea is a constituent element of the Offence⁷) was the Appellant indeed intending by use of such artificial substance to change the condition of the ball? To answer this question I have taken full account of the Appellant's previous clean record, his admitted awareness of the relevant provisions of the Code, and his equally admitted knowledge of the concerns about ball tampering prevalent in the global cricketing community.

6.5 Nonetheless I am comfortably satisfied, that, despite his denials, the Appellant's actions said to constitute the Offence were deliberate and interconnected for a number of reasons: (i) It was the Appellant's own evidence that he was during the Match continually (and as was and would have been habitual for him) polishing the ball before it was thrown to a bowler; (ii) It was also his own evidence that on the day in question he only twice took whatever was in his pocket out of it; (iii) it would, given (i) and (ii) be an extraordinary coincidence if on the occasion of the alleged offence he was first chewing on a Strepsil only for therapeutic purposes or on an almond only to enhance energy and second polishing the ball on his trouser leg with the resulting artificial substance but without being aware of the impact of the former on the latter; (iv) There would clearly be a good (if improper) reason for doing the first before the second; (v) The Appellant had no cogent explanation for that sequence of events other than to say that it was mere happenstance; (vi) The indelible video footage was compulsive to my conclusion. This was not a case where I could sensibly determine that the Appellant's left hand did not know what his right hand was doing (or vice versa).

6.6 It is, in the light of my analysis of the pertinent provisions of the relevant legal instruments, immaterial that the Umpires did not detect at any time during the second day of the match (or indeed after close of play) any visible change in the condition of the ball. That lynchpin of the Appellant's argument was as a result simply insufficient in point of law or fact to support it.

7. SANCTION

7.1 If I determine, as I have done, that the Offence has been committed, Article 7.1 of the Code requires the imposition of an appropriate sanction within the range set out in the table at Article 7.3 of the Code for such an offence (here, 'the imposition of a fine of between 50-100% of the applicable Match Fee and/or up to two (2) Suspension Points').

⁷ An issue which I do not need now to determine and may well be relevant to sanction only.

One Suspension Point means the player is suspended from an ODI or T20 match; two Suspension Points mean the player is suspended for two ODI/T20 matches or for one Test match (Art 7.4).

- 7.2 In determining the appropriate sanction [within that range], I “shall take into account any factors that he/she deems relevant and appropriate to the mitigation or aggravation of the nature of the Code of Conduct offence ...” I am not restricted in any way by the decision of the Match Referee. Rather, Article 8.2.3.3 of the Code provides: ‘For the avoidance of doubt, the Judicial Commissioner shall have the power to increase or decrease, amend or otherwise substitute a new decision on the appropriateness (or otherwise) of the sanction imposed at first instance, provided that any new sanction must be within the permitted range of sanctions set out in the table at Article 7.3’.
- 7.3 The Appellant’s written submissions asserted that the sanctions were disproportionate to the offence. Paying full regard to the guidance provided by Article 7 of the Code, I must disagree. The Appellant was not only the Captain of the Sri Lankan team who should in right of office provide an example of good behaviour to his colleagues. He was also well aware of the aversion to ball tampering, not only in the Code, but in consequence of well publicised cases, such as Du Plessis itself and the incident in the recent test series between Australia and South Africa which has acquired (inevitably) the soubriquet ‘sandpaper gate’. Additionally, he agrees that he had heard Richard Kettleborough (a member of the ICC cricket committee) warn both teams before the current test series between Sri Lanka and the West Indies to avoid such conduct, offensive as it is to the spirit of Cricket.
- 7.4 The Appellant's previous good record was the only relevant factor to be placed, but insufficiently, on the other side of the scales, and, in my view (in concurrence with that of the Match Referee) a sanction at the upper range of those provided for in the Code was entirely appropriate as a deterrent, not only to the Appellant but to all those subject to the Code, who play this game. To adapt the well-known aphorism, ball tampering is not cricket.

Michael J Beloff EC

Michael Beloff QC Judicial Commissioner

London 25th June 2018