

**IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE ICC ANTI-CORRUPTION CODE**

Between:

THE INTERNATIONAL CRICKET COUNCIL (“ICC”)

And

MR IRFAN ANSARI

Award

1. INTRODUCTION

1.1 The ICC, the international federation responsible for the global governance of the game of cricket, has brought disciplinary proceedings against Mr Irfan Ansari (“Mr Ansari”) under the ICC Anti-Corruption Code for Participants (“the Code”) alleging breaches of Articles 2.3.3 and 2.4.6 thereof. Mr Ansari denies having committed any such breaches.

2. BACKGROUND

2.1 The general background is not the subject matter of any substantial dispute between the parties. In so far as there is any such dispute the Panel’s summary is based on its evaluation of the written and oral evidence before it.

2.2 Mr Ansari is a Pakistani national who has resided in the UAE for some thirty years. Throughout his time in the UAE Mr Ansari has been closely involved with cricket in the Emirates first as a player, then as a coach at domestic clubs at both age-group and senior levels under the jurisdiction of the Emirates Cricket Board (“ECB”) through its Regional Councils.¹

¹ Specifically, Mr Ansari is the coach of two different cricket teams (One Stop Tourism and Multiplex International) that participate in Domestic Matches in the UAE played under the auspices of the ECB. By way of example, in 2017 both teams participated in the Abu Dhabi Super 8’s, the Sharjah T20 Bash, and the Mulk Corporate which are classified as Official matches by the ECB.

- 2.3 In addition, ever since the men's senior national representative Pakistan team ("the Pakistan team") has been using the UAE as the base for its home games, Mr Ansari has assisted by organising and managing the provision of net bowlers to that team for its practice sessions.
- 2.4 In 2013 and 2014, Mr. Sarfraz Ahmed ("Mr Ahmed"), the current captain of the Pakistan team, met Mr Ansari while playing for a team called Al Fara'a in the Sharjah Super Sixes (Mr Ansari being coach for a competitor team, Phoenix Medicine) and between 2013-2017 came into contact with him in his role as organizer of net bowlers for the Pakistan team.
- 2.5 On 8 September 2015, the Pakistan Cricket Board ("PCB") announced that a Pakistani test cricketer, Mr. Sharjeel Khan, had been banned for five years for spot-fixing in relation to a PSL match. Mr Khan had previously played for the Phoenix Medicine team coached by Mr Ansari. The relevance of this fact will be explained later in this award.
- 2.6 In October 2017, the Pakistan team was in the UAE contesting a series of matches against Sri Lanka (two Test Matches, five One Day International ("ODI") Matches and a Twenty20 ("20/20") International Match). For the duration of that series, the Pakistan team was based at the Intercontinental Hotel in Festival City, Dubai ("the hotel").
- 2.7 On the afternoon of 17 October 2017, (the day before the third ODI), Mr Ahmed received a telephone call from Mr Ansari, who said that he wanted to meet Mr Ahmed. Mr Ahmed therefore invited Mr Ansari to the hotel and arranged to meet him in the lobby.
- 2.8 Between 9.30 and 10pm Mr Ansari and Mr Ahmed duly met in the lobby of the hotel. Mr Ansari was accompanied by two young net bowlers. They sat apart while Mr Ansari and Mr Ahmed talked for about 15 minutes ("the Conversation") and had photographs taken with Mr Ahmed at the conclusion of the Conversation. What was or was not said during the Conversation is the pivotal issue in these proceedings.
- 2.9 During the Conversation the Pakistan team coach Mr. Mickey Arthur came over with a view to talking to Mr Ahmed but when he started to speak the latter cut him off and said they should speak later.
- 2.10 Following the Conversation, Mr Ahmed returned to his hotel room and sometime between 10.30-11 pm called Colonel Khalid (PCB ACU²), who was also a guest at the hotel, and reported that Mr Ansari had made a corrupt approach to him. Mr Ahmed described his version of the conversation, including that Mr Ansari had made mention of Mr. Sharjeel Khan.

² An acronym for anti-corruption unit.

- 2.11 Next, sometime between 11-11.30 pm Mr Ahmed went to see Mr Arthur in Mr Arthur's room and repeated his allegation that Mr Ansari had made a corrupt approach. Mr Arthur then mentioned to Mr Ahmed that he had noticed that the latter had seemed uncomfortable when they spoke in the lobby earlier.
- 2.12 On 18 October 2017, the third ODI between the Pakistan team and the Sri Lankan team took place in Abu Dhabi.
- 2.13 On 20 October 2017, the fourth ODI, between the Pakistan team and the Sri Lankan team took place in Sharjah. Mr Ahmed spotted Mr Ansari in the VIP area at the venue and complained to Colonel Khalid and Mr Arthur.
- 2.14 At or about the same time reports appeared in Pakistan social media of a case of corruption involving Mr Ahmed and Mr Ansari. The source of such reports has not been identified.
- 2.15 On 20 October 2017, at 11.20 am, Colonel Khalid reported Mr Ansari's alleged corrupt approach to Mr Ahmad Dharamveer Yadav ("Mr Yadav"), the ICC ACU Anti-Corruption Manager ("ACM") assigned to the current Pakistan-Sri Lanka series. On the same day Mr Yadav sent a summary report about the Conversation to the ACU, who in consequence contacted Mr Ahmed and arranged to meet him the next day.
- 2.16 On 21 October 2017, the ACU interviewed Mr Ahmed about the Conversation. The interview was conducted by Mr Alexander Marshall (General Manager of the ACU) ("Mr Marshall") and Mr Steven Richardson (ACU Coordinator Investigations) ("Mr Richardson").
- 2.17 On 21 October 2017, the ACU applied to Mr Marshall for permission to download data from Mr Ansari's mobile devices.
- 2.18 On 22 October 2017, Mr Marshall granted the ACU's application in accordance with the ICC's Standard Operating Procedure ("SOP") which is engaged when the ACU seeks to take possession of and/or copy or download information from Mobile Device(s). Mr Marshall was satisfied that the ACU had reasonable grounds to believe that there might be evidence on Mr Ansari's device(s) of relevance to the investigation (in particular because there were strong grounds in consequence of the interview with Mr Ahmed to suspect that Mr Ansari had made a corrupt approach to Mr Ahmed).
- 2.19 On 22 October 2017, ACU interviewed Mr Ansari under caution. Mr Ansari was accompanied by Mr Fahad Ansari, his son ("Mr Ansari's son"). Mr Ansari admitted meeting Mr Ahmed in the hotel lobby but denied making any corrupt approach to him. During the course of the interview, Mr Ansari was presented with a Demand (pursuant to

Code Article 4.3) (“the First Demand Letter”) which, inter alia, and, pursuant to changes in the Code of September 2017, requested him to allow the ACU to take possession of and/or copy or download information from his Mobile Device(s). Mr Ansari refused to hand over his mobile telephone. His explanation for such refusal will be considered later in this award.

2.20 In providing Mr Ansari with the First Demand Letter, Mr Marshall and Mr Richardson made the following matters clear to Mr Ansari, as vouched for by the transcript of that interview.

- (i) It was the ACU's view that Mr Ansari was bound by the Code.
- (ii) Mr Ansari was under an obligation to cooperate with the ACU's investigation, including by handing over his phone.
- (iii) Mr Ansari was fully entitled to seek legal advice about the ACU's request for Mr Ansari to hand over his phone.
- (iv) If Mr Ansari failed to hand over his phone or refused to allow the ACU to secure it while he obtained legal advice, Mr Ansari would be considered to have failed to cooperate with the Demand, and thus the investigation, and thus to have breached the Code.

2.21 The First Demand Letter also required Mr Ansari to provide various listed documents to the ACU and other information within two weeks, including itemised telephone billing records for all his mobile phones, bank statements and details of any land or property that he owns. Mr Ansari did not provide the information requested and on 5 November 2017, the date designated for his response, Mr Ansari wrote to Mr Marshall, stating: 'I am not legally obliged to provide any details in form of document or verbal to your institution as I am not associated directly to any cricketing comity (sic) or member body ... '. He described the allegation of corruption against him as false and malicious.

2.22 On 13 December 2017, the ACU interviewed Mr Ahmed for a second time with the aid of an Urdu interpreter (Mr Ahmed’s first language being Urdu though he was competent in English). Mr Ahmed repeated, in essence, what he had said during first interview.

2.23 On 8 February 2018, Mr Marshall sent Mr Ansari another Demand (“the Second Demand Letter”), which reiterated that the ACU considered that, at all material times, Mr Ansari constituted a Participant under the Code and was therefore required to cooperate with the ACU’s investigation, including by providing any information required via a Demand and by allowing the ACU to take possession of and/or copy or download information from his Mobile Device(s).

2.24 The Second Demand Letter granted Mr Ansari a further 7 days in which to cooperate and provide copies of the information and/or documentation requested, i.e. until 15

February 2018, as well as to surrender his mobile phone to the ACU for the purposes of enabling it to be downloaded.

2.25 Despite confirmation that Mr Ansari had received the Second Demand Letter no response of any kind was received by the ACU either by the deadline of 15 February 2018 or any time thereafter.

3. PROCEEDINGS

3.1 On 9 May 2018, the ICC sent a Notice of Charge to Mr Ansari charging him with a breach of Code Article 2.3.3 (in relation to his approach to Mr Ansari) and two separate breaches of Code Article 2.4.6 (in relation to his failure/and or refusal to provide information pursuant to the First and Second Demand Letters). The Notice of Charge placed Mr Ansari under a Provisional Suspension, which he did not contest.

3.2 On 22 May 2018, Mr Ansari responded to the Notice of Charge denying each of the charges. Mr Ansari stated (among other things) that he 'was not comfortable in sharing [his] personal information with anyone because of someone's accusations for which no proof was given nor mentioned at the interview held by the ACU team', that he 'strongly request the tribunal and all dignitaries to look into this matter with a neutral prespect (sic).', and that 'he request the ICC to please make sure that they only entertain accusations made with supporting proof and evidence ... This should not happened (sic) just because of verbal accusations ... If the mentality is that the Captain of a nation cannot make a mistake then I think we have an example recently.'

3.3 On 25 June 2018, in light of Mr Ansari's denials of the charges, an Anti-Corruption Tribunal was appointed (pursuant to the Code Articles 5.1.1 and 5.1.2), consisting of The Hon. Michael Beloff QC (Chairman), The Hon. Mr Justice Winston Anderson and Mr John McNamara ("the Tribunal") to hear and determine the charges against him.

3.4 On 25 June 2018, the Chairman, after consultation with the other members, gave procedural directions for the disposition of the charges.

3.5 On 26 July 2018, the ICC filed its brief.

3.6 On 23 August 2018, Mr Ansari filed his answer (and on 5 November 2018 made further submissions in writing) ("the Answer").

3.7 On 16 December 2018, a hearing took place at the ICC headquarters in sports city Dubai before the Tribunal.

3.8 Mr Ansari was represented by Mr Ansari's son. The ICC was represented by Mr. Jonathan Taylor QC and Ms. Sally Clark Senior Legal Counsel to the ICC.

3.9 The Tribunal heard evidence from Mr Ansari and Mr Ahmed (the latter by video conference from Pakistan), as well as from Mr Marshall, (whose statement dated 26 July 2018 exhibited transcripts of the various interviews and documents referred to above), and received written statements for the ICC from Mr Arthur, dated 18 July 2017 and Lieutenant Colonel Khalid dated 17 July 2017³. The Tribunal has carefully considered all that evidence as well as transcripts of the hearing itself. It also heard submissions from Mr Ansari's son and Mr Taylor.

3.10 The Tribunal would wish to pay special tribute to Mr Ansari's son, who, though not a lawyer, conducted his father's defence with diligence and courtesy. It is also grateful to the ICC team for the clarity of its presentation.

4. JURISDICTION⁴

4.1 Code Article 1.4.2 provides that the following people will constitute Player Support Personnel and thus fall within the jurisdiction of the Code by virtue of being a Participant:

“any coach, trainer, manager, selector, team owner or official, doctor, physiotherapist or any other person who:

1.4.2.1 is employed by, represents or is otherwise affiliated to (or who has been employed by, has represented or has been otherwise affiliated to in the preceding twenty-four (24) months) a team that participates in International Matches and/or a playing or touring club, team or squad that participates in Domestic Matches and is a member of, affiliated to, or otherwise falls under the jurisdiction of, a National Cricket Federation.”

4.2 Mr Ansari is and has been at all relevant times a Player Support Personnel and thus bound by the Code by reason of the facts set out in paragraphs 2 being both affiliated to a team that participates in International Matches (namely the Pakistan team) and a coach of two teams that participate in Domestic matches and are affiliated to and fall within the jurisdiction of a National Cricket Federation (namely the ECB).

4.3 Code Article 1.5 stipulates that each *Participant* is bound by the Code and, among other things, is deemed to have agreed:

³ Their attendance was not required by Mr Ansari, the ICC or the Tribunal.

⁴ The ICC's jurisdiction over Mr Ansari was initially contested by Mr Ansari; (see paragraph 2.21 above) but at the hearing, in the Tribunal's view, correctly, he withdrew his challenge.

- "1.5.1 not to engage in *Corrupt Conduct* in respect of any *International Match*, wherever it is held and whether or not he/she is personally participating or involved in any way in it;
- 1.5.2 that it is his/her personal responsibility to familiarise him/herself with all of the requirements of the *Anti-Corruption Code*, and to comply with those requirements (where applicable);
- 1.5.3 to submit to the jurisdiction of the *ICC* to investigate apparent or suspected *Corrupt Conduct* that would amount to a violation of the *Anti-Corruption Code*;
- 1.5.4 to submit to the jurisdiction of any *Anti-Corruption Tribunal* convened under the *Anti-Corruption Code* to hear and determine, (a) any allegation by the *ICC* that the *Participant* has committed *Corrupt Conduct* under the *Anti-Corruption Code*; and (b) any related issue (e.g., any challenge to the validity of the charges or to the jurisdiction of the *ICC* or the *Anti-Corruption Tribunal*, as applicable); ... "

5. CHARGE NO.1 - BREACH OF CODE ARTICLE 2.3.3, IN THAT MR ANSARI DIRECTLY SOLICITED, INDUCED, ENTICED AND ENCOURAGED MR AHMED TO BREACH CODE ARTICLE 2.3.2

5.1 Code Article 2.3.2 makes the following an offence: 'Disclosing *Inside Information* to any person where the *Participant* knew or should have known that such disclosure might lead to the information being used in relation to *Betting* in relation to any *International Match*.' *Inside Information* is defined under the Code as 'Any information relating to any *Match* that a *Participant* possesses by virtue of his/her position within the sport. Such information includes, but is not limited to, factual information regarding the competitors in the *Match*, the conditions, tactical considerations or any other aspect of the *Match* ... '.

5.2 Code Article 2.3.3 makes the following an offence: 'Directly or indirectly soliciting, inducing, enticing, persuading, encouraging or intentionally facilitating any *Participant* to breach any of the foregoing provisions of this Article 2.3'.

5.3 There are rival versions of the Conversation.

5.4 According to Mr Ahmed, after a brief exchange of courtesies, Mr Ansari started to talk to him about making money himself and helping Mr Ansari to make money. Mr Ansari asked Mr Ahmed whether for that purpose he would give signals in advance of bowling

changes, mentioned the sum of “one million”, and referred to the banned Mr Sharjeel Khan, saying that had the latter spoken to him, he could have told him how to fix a match.

5.5 Mr Ahmed felt very uncomfortable with these remarks being in no doubt that Mr Ansari was seeking to engage him in corrupt conduct. He therefore repeatedly asked Mr Ansari to stop talking about such things and informed him that if he did not do so then he would have to report Mr Ansari. In response, Mr Ansari asked Mr Ahmed to pretend that he had not said anything to him. After that the Conversation turned to ‘ordinary cricketing matters’.

5.6 For his part Mr Ansari recalled that the Conversation consisted only of social chat and ordinary cricketing talk connected to the current Pakistan-Sri Lanka ODI series. He expressly denied that he made any corrupt overtures to Mr Ahmed or made any reference at all to Mr Sharjeel Khan.

5.7 In the Tribunal’s view there were only three theoretical possibilities as to what occurred during the Conversation. The first is that there was a genuine misunderstanding, Mr Ahmed interpreting words spoken by Mr Ansari which were in fact wholly innocent as an invitation to assist in spot fixing. The second is that Mr Ahmed was not telling the truth. The third is that Mr Ansari was not telling the truth.

5.8 The Tribunal rejects the first possibility. At one stage in his evolving evidence as to what he did or did not say in the Conversation,⁵ Mr Ansari mentioned to the Tribunal that he had asked Mr Ahmed as to why he had made certain bowling changes during the first two ODIs⁶. Critically, whatever may have been said, it was not suggested by Mr Ansari (or put to Mr Ahmed in cross-examination) that his question to Mr Ahmed about bowling changes he had made in the past could have been construed as an invitation to Mr Ahmed to signal bowling changes he would make in the future; nor indeed has misunderstanding ever been part of Mr Ansari’s defence. In any event the Tribunal cannot see how Mr Ansari’s proposal to make money and his reference to Mr Sharjeel Khan, to which Mr Ahmed expressly testified, could have been the product of any misunderstanding. Either Mr Ansari made such a proposal and such reference or he did not. The Tribunal makes the same point a fortiori in respect of Mr Ahmed’s testimony that Mr Ansari asked him to keep silent about his approach.

5.9 The Tribunal also rejects the second possibility. Mr Ansari’s stark position is that Mr Ahmed’s evidence was deliberately untruthful and the product of malice. The Tribunal cannot identify any reason why Mr Ahmed should act maliciously towards Mr Ansari. On

⁵ At one stage in his evidence he said, for the first time that the pair discussed Pakistani politics. Nor was it ever wholly clear from that evidence whether during the Conversation he praised Mr Ahmed’s performances or suggested, in the face of it inconsistently, that they could be improved.

⁶ Again, the precise context in which bowling changes were mentioned was never fully clarified.

the contrary there was undisputed evidence that the pair, who came from the same region in Pakistan were close; indeed, Mr Ansari himself variously described Mr Ahmed as being like a brother or son to him.

5.10 The only motive advanced for why Mr Ahmed should falsely inculpate a family friend was that he wished to create a distraction from his recent failures as the newly appointed captain of the Pakistan team. While different interpretations of the record of the Pakistan team during Mr Ahmed's captaincy can no doubt be sincerely held, Mr Ahmad made a convincing defence of his and the Pakistan team's record. Accepting that the team had lost two test matches against Sri Lanka, he pointed out "We were returning from a win in the Champions Trophy. I had also played well in the World 11 matches". There was no evidence produced that his own position as captain was at that time in jeopardy. As he put it "There was no hue and cry because we lost the two matches".

5.11 In any event the Tribunal found the distraction hypothesis wholly unconvincing. Had Mr Ahmed made allegations as to a corrupt approach by Mr Ansari which were unsubstantiated and false, he risked exposure as a teller of lies which would in all likelihood have brought his captaincy of the national team to an abrupt end. In the Tribunal's view this risk was far stronger than the chance that by purporting to turn informer he would save that captaincy if it were indeed otherwise vulnerable.

5.12 Mr Ahmed's version of the Conversation as expounded both in his interviews in his witness statement dated 18 July 2018, and in his oral testimony was essentially consistent; and there was nothing in his past record or his demeanour before the Tribunal which would cast doubt on his credibility. The fact that he promptly reported the alleged approach to two senior persons is at the very least consistent with his evidence about it (by corollary failure to report it promptly might have cast a shadow of doubt over such evidence). The Tribunal also considers Mr Arthur's evidence, that Mr Ahmed appeared to be upset when he was approached in the lobby whilst engaged in the Conversation, to have some corroborative value.

5.13 The Tribunal is therefore left perforce with the third possibility, but it finds it made out not only by such process of elimination. While it accepts that Mr Ansari enjoys the benefit of a clean record, it is trite that there is a first time for everything; and that even persons who like Mr Ansari appear to be comfortably off in monetary terms are not necessarily free from the temptation to add corruptly to their assets. Nor is the argument that Mr Ansari could, if he wanted to make a corrupt approach, have made it on other occasions at all impressive. No doubt he could but the evidence is that he made it on this occasion; the true issue is as to the cogency of that evidence.

5.14 As to this, the Tribunal notes, additionally to the points already made, that it was Mr Ansari who instigated the meeting which took place in the lobby). His explanation that

this was a purely social call does not sit entirely well with the fact that it was late in the evening and on the eve of an ODI. (The Tribunal finds it difficult to accept that Mr Ansari was, given his functions *vis a vis* the Pakistan team, unaware, as he claims, of that fact). Mr Ahmed was of course as captain the only person who could decide on bowling changes and, as a close friend might well be thought, even if immune to a corrupt proposal, unlikely to turn whistleblower.

5.15 Moreover, had Mr Ahmed wished for motives of his own falsely to inculpate Mr Ansari, it would have been he rather than Mr Ansari who would have instigated the meeting and would in all probability have invented a simpler and more damaging version of the Conversation.

5.16 Mr Ansari's son submitted that there was no evidence to support the charge of a corrupt approach. This betrays an excusable misunderstanding of the legal position. Mr Ahmed testimony was itself legally admissible evidence. What Mr Ansari's son might have more cogently said - indeed might have meant to say - was that there was no corroboration of Mr Ahmed's testimony. The Tribunal notes, however, that first there is no legal requirement for such corroboration; second that Mr Arthur's perception of Mr Ahmed's discomfort at the time of the Conversation is at least some, if not compelling, corroboration; third that Mr Ahmed's refusal, without sufficient justification, to give a positive response to the demand letters, is itself corroboration by giving rise to an adverse inference. cf the Code Article 3.2.1 and 3.2.3.

5.17 Mr Ansari's son also suggested that the ACU had treated Mr Ahmed and Mr Ansari unequally and that in fairness it should have made equivalent demands, especially in connection with Mr Ahmed's own mobile device. Given that the ACU had no evidence that could conceivably have inculpated Mr Ahmed in some breach of the Code, there was no basis upon which, in fidelity to the SOP, Mr Marshall could have acceded to any application, if any had been made, for any demand directed against Mr Ahmed. It is only like cases which have to be treated alike. Nor were the ACU obliged to take statements from the two net bowlers who accompanied Mr Ansari to the hotel. There was no evidence before the ACU that they overheard the Conversation and given what the Tribunal finds to have been its content, Mr Ansari would have been a fool to allow them to do so. Nor was there any force in the suggestion made in the Answer that Mr Sharjeel Khan should have been questioned by the ACU as a potential witness for the defence. The fact of the disciplinary finding against him was not in dispute; and the only issue which arose in relation to the first charge was whether he had been mentioned in the Conversation, a matter of which he, not being privy to the Conversation, could have given no relevant evidence.

5.18 Mr Ansari's son submitted with more cogency that in his interview Mr Ansari had been questioned about Mr Rohan Mustafa, captain of the UAE national team, who was said

to have accused him of asking Mr Mustafa to do match or spot fixing. This was, in the Tribunal's view, a regrettable (though, as explained⁷, an understandable) error. At the same time Mr Ansari was not questioned about Mr Sharjeel Khan. This was, in the Tribunal's view, a less understandable error given that Mr Ahmed had referred to Mr Sharjeel Khan. However neither of these errors in the interview process, both previously pointed out by Mr Ansari in his e mail of 22 May 2018 and in his Answer, in any way undermined the credibility of Mr Ahmed's evidence. Nor did the short delay on the part of the PCB in informing the ACU of the allegations made by Mr Ahmed or their disclosure by an unknown source on Pakistan social media, though both also regrettable in their different ways, cast doubt on it.

5.19 For the above reasons the Tribunal is comfortably satisfied that Mr Ansari breached Article 2.3.6 of the Code on the basis of the following findings which flow from the above analysis:

- (i) Mr Ahmed - the captain of the Pakistan men's senior national representative cricket team - is a 'Participant' under the Code.
- (ii) On the eve of an International Match between Pakistan and Sri Lanka, and in the middle of a series of such matches between those two countries, Mr Ansari:

approached Mr Ahmed about 'making money', mentioning the sum of "one million" and referring to Mr Sharjeel Khan (a player who had recently been found guilty of corruption charges relating to spot-fixing with a bookmaker); and

asked Mr Ahmed to provide him with signals in advance of bowling changes (which would constitute the disclosure of 'Inside Information' because it is information relating to a Match that Mr Ahmed would possess by virtue of his position within the sport i.e. his captaincy of Pakistan).

- (iii) When Mr Ahmed promptly rebuffed Mr Ansari's approach, Mr Ansari asked Mr Ahmed to pretend that the conversation had never taken place (thereby betraying a guilty mind).
- (iv) As a result of what Mr Ansari said to him (including, as above, the references to "one million" and Mr Sharjeel Khan, a player who had recently engaged in

⁷ Mr Mustafa's allegation about an approach had by coincidence come to the Interviewers' attention only an hour or so before the Interview with Mr Ansari, and they inferred inaccurately a connection between the two.

spot-fixing with a bookmaker), Mr Ahmed was left in no doubt that Mr Ansari had approached him with a view to engaging him in corrupt conduct.

5.20 It follows from those findings that Mr Ansari breached Code Article 2.3.3 because he directly solicited, induced, enticed and/or encouraged Mr Ahmed to disclose Inside Information to him.⁸ Had Mr Ahmed acceded to Mr Ansari's approach, Mr Ahmed would have breached Code Article 2.3.2, because Mr Ahmed would (or should) have known that disclosure of such information might lead to it being used in relation to Betting in relation to an International Match as is evidenced by the fact that Mr Ahmed reported Mr Ansari's approach.

6. CHARGES NO.2 AND NO.3 - BREACHES OF THE CODE ARTICLE 2.4.6, IN THAT MR ANSARI FAILED OR REFUSED TO COOPERATE WITH THE ACU'S INVESTIGATION BY FAILING TO PROVIDE ACCURATELY AND COMPLETELY THE INFORMATION AND/OR DOCUMENTATION REQUESTED BY THE ACU IN THE FIRST DEMAND LETTER AND THE SECOND DEMAND LETTER RESPECTIVELY

6.1 Code Article 4.2 (with which Mr Ansari is deemed to be familiar by virtue of Code Article 1.5.2) states:

'The ACU may at any time conduct an investigation into the activities of any *Participant* that it believes may have committed an offence under the *Anti-Corruption Code* ... All *Participants* ... must cooperate fully with such investigations, failing which any such *Participant* shall be liable to be charged with a breach of the *Anti-Corruption Code* pursuant to Articles 2.4.6 ... '.

6.2 Code Article 2.4.6 makes the following an offence:

'Failing or refusing, without compelling justification to cooperate with any investigation carried out by the ACU in relation to possible *Corrupt Conduct* under the *Anti-Corruption Code* (by any *Participant*), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the ACU (whether as part of a formal *Demand* pursuant to Article 4.3 or otherwise) as part of such investigation.'

⁸ For completeness, Code Article 2.5.1 provides that 'Any attempt by a Participant... to act in a manner that would culminate in the commission of an offence under the Code, shall be treated as if an offence has been committed, whether or not such attempt ... in fact resulted in such offence.' Therefore, even if (*quod non*) the Tribunal was merely satisfied that Mr Ansari had simply attempted to solicit, induce, entice and/or encourage Mr Ahmed to breach a provision of Code Article 2.3, that would be enough to sustain the charge.

6.3 Code Article 4.3 states:

'As part of any investigation, the *ACU General Manager* may at any time (including after a *Notice of Charge* has been provided to a relevant *Participant*) make a written demand to any *Participant* (a “**Demand**”) to provide the *ACU*, in writing and/or by answering questions in person at an interview and/or by allowing the *ACU* to take possession of and/or copy or download information from his/her *Mobile Device(s)* (as the *ACU General Manager* elects), with any information that the *ACU General Manager* reasonably believes may be relevant to the investigation. Such information may include (without limitation) (a) copies or access to all relevant records (such as current or historic telephone records, bank statements, Internet services records and/or other records stored on computer hard drives or other information storage equipment or any consent forms related thereto); (b) any data and/or messages and/or photographs and/or videos and/or audio files and/or documents or any other relevant material contained on his/her *Mobile Device(s)* (including, but not limited to, information stored through SMS, WhatsApp or any other messaging system); and/or (c) all of the facts and circumstances of which the *Participant* is aware with respect to the matter being investigated. Provided that any such *Demand* has been issued in accordance with this Article, and subject to any applicable principles of national law, the *Participant* shall cooperate fully with such *Demand*, including by furnishing such information within such reasonable period of time as may be determined by the *ACU General Manager*. Where such a *Demand* relates to the request to take possession of and/or copy or download information contained on a *Participant's Mobile Device*, then such information shall be provided immediately upon the *Participant's* receipt of the *Demand*. In all other cases, save where exceptional circumstances exist, a minimum period of fourteen days from receipt of the *Demand* will be provided. Where appropriate, the *Participant* may seek an extension of such deadline by providing the *ACU General Manager* with cogent reasons to support an extension, provided that the decision to grant or deny such extension shall be in the discretion of the *ACU General Manager*, acting reasonably at all times.

6.4 The Tribunal was initially concerned as to whether there was a basis for the demands in the first or second demand, it being accepted by the ICC that, absent a legitimate basis for the demands, a failure or refusal to accede to them would involve no breach of the Code. Its concerns were rooted in the following consideration, namely that there was no dispute that: (i) Mr Ansari initiated the contact on the 27 October 2017 by mobile telephone with Mr Ahmed; (ii) the alleged corrupt approach was said to have been made in the course of a face to face conversation; and (iii) this was (if made at all) the first such corrupt approach made by Mr Ansari to Mr Ahmed. It was therefore not immediately apparent what additional information relevant to the alleged offence itself could be found on the mobile device. The carefully drawn SOP did not allow for fishing expeditions for possible breaches other than the one under investigation. In the absence of qualified legal counsel

acting for Mr Ansari the Tribunal considered it proper to raise these concerns with the ICC and did so.

- 6.5 The Tribunal was, however, persuaded by Mr Marshall that experience showed that those who make approaches to cricketers to assist in match or spot fixing do not act as lone wolves; there would be drivers for such approaches, which would not ordinarily be made in isolation. As it understood Mr Marshall's impressively and carefully given evidence, as befitted one with his long and distinguished career as part of Her Majesty's Constabulary, Mr Ansari would only have been able to make use of advance notice of bowling changes if (at the very least) he or (more likely he and others) could lay bets with the benefit of illicitly obtained inside information. The material sought in the demand letters would therefore in all probability reveal further links in a chain of corruption, experience also showing in particular that a mobile device was a regular repository of such information.
- 6.6 The Tribunal also considered whether it could be plausibly argued that, albeit information could, pursuant to the SOP, only be downloaded with Mr Ansari's consent, any consent given might be vitiated by duress i.e., that refusal to give it would itself be a breach of the Code and carry with it potentially severe sanctions. However, in its view, any such argument could be defeated, *inter alia*, by the fact that such failure/refusal could be excused, under the Code Article 2.4.6, by "compelling justification".
- 6.7 As to this, Code Article 2.5.3 is clear that the burden of proof to establish the triggering of such 'get out' clause lay on Mr Ansari providing that: 'Where a *Participant* seeks to rely on the existence of "compelling justification" to justify or excuse conduct under the *Anti-Corruption Code* which might otherwise amount to an offence (see Article 2.4.6), the burden shall be on that *Participant* to adduce sufficient credible evidence to prove, on the balance of probabilities, that genuine and powerful reasons exist (or existed) to objectively justify his/her conduct taking into account all the relevant circumstances'.
- 6.8 This 'get out' clause is of necessity tightly drawn. The Tribunal bears in mind what was aptly said by the Court of Arbitration for Sport ("CAS") in Mong Joon Chung v. FIFA CAS 2017/A/5086 (at paragraph 189) - 'Preliminarily, the Panel recognizes the importance that sports governing bodies establish rules in their respective ethical and disciplinary codes requiring witnesses and parties to cooperate in investigations and proceedings and subjecting them to sanctions for failing to do so. Sports governing bodies, in contrast to public authorities, have extremely limited investigative powers and must rely on such cooperation rules for fact-finding and to expose parties that are violating the ethical standards of said bodies. Such rules are essential to maintain the image, integrity and stability of sport'.

6.9 Furthermore, the concept of “compelling justification” is not unique to the Code. It is to be found, for example, in the IAAF anti-doping regulations where it can be deployed, if available to justify refusal to take a doping test. In the recent case of **Bett v IAAF SR Ad Hoc Sport 178/2018 212/2018** the Panel, borrowing on CAS jurisprudence, said this at para 94:

- “(i) *If the Athlete can prove on a balance of probability that his act was compellingly justified, his rejection of the test will be excused*”; **Brothers v FINA**, CAS 2016/A/4631, para. 76.
- (ii) the existence vel non of such justification shall be determined objectively, the issue is not *“whether the Athlete was acting in good faith, but, whether objectively he was justified by compelling reasons to forego the test”*. **Troicki v ITF**, CAS 2013/A/3279, para. 9.15.
- (iii) the phrase “compelling justification” in Article 2.3 ADR must be construed “*extremely narrow[ly]*”, because otherwise testing efforts would be completely undermined. See e.g., **Wium v IPC**, IPC Management Committee decision dated 7 October 2005, para 3: *“an efficient out-of-competition testing programme can only work if the boundaries of “compelling justification” are kept extremely narrow. Only truly exceptional circumstances should be allowed to justify refusal to submit to testing.”*
- (iv) For this purpose the athlete must show that the failure to provide a Sample, was unavoidable. See e.g., **Jones v WRU**, NADP Appeal Tribunal decision dated 9 June 2010, para. 57: *“The phrase “compelling justification” connotes that the reason for an athlete refusing must be exceptional, indeed, unavoidable”*. See also SDRCC DT 07-0058 **CCES v Boyle**, decision dated 31 May 2007, para. 53.

6.10 The Tribunal will adopt a similarly rigorous approach, *mutatis mutandis*, to its assessment of whether Mr Ansari can avail himself of this defence.

6.11 In his interview, Mr Ansari relied on his claim that he was not subject to the Code at all. This argument has since been discarded so no more need be said about it.

6.12 More generally Mr Ansari referred to the privacy interests of himself and those with whom he communicated by means of his mobile device. As to this:

- (i) Those interests can always be prayed in aid and, if they amounted to compelling justification, would deprive these articles of the Code of any utility.
- (ii) As a matter of general law, common to many democratic jurisdictions, the right to privacy is not absolute and must yield to more potent public interests such as the suppression of crime or other cognate misconduct⁹.
- (iii) In any event the carefully drawn SOP, which has clearly been vetted by lawyers who are expert in human rights, requires downloaded material to be treated

⁹ See e.g. the European Convention on Human Rights Article 8.2.

with sensitivity; the ACU will only search for material indicative of a breach of the Code. It has no concern with other matters and could not, even were it to wish to do so, make use of them by publication or otherwise. Mr Marshall emphasised that the ACU's investigators are trained to look for particular phrases which have an aroma of suspicion in this context. Reference to money making, would, the Tribunal infers, be potentially relevant, references to sex not.

- (iv) A potential intrusion on a participant's privacy is in any event the price that a participant must pay for his participation in the sport.
- (v) A participant retains the right to refuse to permit the intrusion, albeit at the price, potentially, of further participation in the sport.

6.13 Finally, before the Tribunal, but not, it seems previously, Mr Ansari relied on his immediate and continuing need for his current mobile phone. However, given that the ACU will always offer to obtain a substitute device for someone who genuinely has such need, this excuse could provide no justification for a failure to hand over the device demanded.

6.14 As to the other information sought alongside downloaded data, it was never- and was never put by the ACU- as a case of all or nothing. Mr Ansari's belated willingness, as expressed to the Tribunal, to hand over such information as bank statements does not excuse his failure to do so at the times the successive demands were made. He could, albeit wrongly, have refused to allow his mobile device data to be downloaded while providing some or all of the other material sought.

6.15 For the above reasons the Tribunal is therefore comfortably satisfied that Mr Ansari was guilty of breaches of Articles.2.4.6 on the basis of the following findings which flow from the above analysis.

- (i) The ACU was conducting an investigation under Article 4 of the Code into the activities of a *Participant* - namely, Mr Ansari himself;
- (ii) By way of the First and Second Demand Letters, the ACU requested information and/or documentation from Mr Ansari in accordance with Article 4.3 of the Code (including a request to allow the ACU to take possession of and/or copy or download information from his Mobile Device(s) and requests for other information and documentation);
- (iii) The ACU General Manager reasonably believed that the information and documentation held by Mr Ansari was relevant to the ACU's investigation; and

- (iv) Mr Ansari has failed and/or refused to provide the information demanded 'accurately or completely'.

6.16 In summary the Tribunal found Mr Ansari guilty of offences under two Articles of the Code, namely:

6.16.1 Code Article 2.3.3,10 in that Mr Ansari directly solicited, induced, enticed or encouraged Mr Sarfraz Ahmed (captain of Pakistan) to disclose Inside Information, in breach Code Article 2.3.2;11 and

6.16.2 Code Article 2.4.6,12 in that Mr Ansari failed or refused without compelling justification to cooperate with the ACU's investigation by failing to provide accurately and completely information and/or documentation requested by the ACU, including by not allowing the ACU to take possession of and/or copy or download information from his Mobile Device(s) and not responding to requests for other information and documentation.

7. SANCTIONS

Introduction

7.1 At the conclusion of the oral hearing the Tribunal announced that on the contingency that Mr Ansari was found guilty of either of the charges against him, the Tribunal would need to consider sanction in accordance with the provisions of Article 6 of the Code.

7.2 That contingency having occurred the Tribunal duly set a timetable for the filing of submissions on sanctions.

7.3 On 28th January 2018 the ICC made written submissions on sanction in accordance with those directions. Despite invitation and reminders Mr Ansari failed to reply to the ICC submissions by the end of 5th February 2018, the date stipulated by the Tribunal. Despite

¹⁰ "Directly or indirectly soliciting, inducing, enticing, persuading, encouraging or intentionally facilitating any Participant to breach any of the foregoing provisions of this Article 2.3."

¹¹ Award, paras 5.1 to 5.20. Code Article 2.3.2 makes the following an offence: "Disclosing Inside Information to any person where the Participant knew or should have known that such disclosure might lead to the information being used in relation to Betting in relation to any International Match."

¹² "Failing or refusing, without compelling justification to cooperate with any investigation carried out by the ACU in relation to possible Corrupt Conduct under the Anti-Corruption Code (by any Participant), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the ACU (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) as part of such investigation."

that absence of challenge the Tribunal has of its own motion itself carefully evaluated the ICC's submissions.

General Considerations

A1. Mr Ansari's breaches of Code Articles 2.3.3 and 2.4.6 and range of sanctions

7.4 The Tribunal has found Mr Ansari guilty of offences under two Articles of the Anti-Corruption Code (**Code**)¹³, namely:

7.4.1 Code Article 2.3.3,¹⁴ in that Mr Ansari directly solicited, induced, enticed or encouraged Mr Sarfraz Ahmed (captain of Pakistan) to disclose Inside Information, in breach Code Article 2.3.2;¹⁵ and

7.4.2 Code Article 2.4.6,¹⁶ in that Mr Ansari failed or refused without compelling justification to cooperate with the ACU's investigation by failing to provide accurately and completely information and/or documentation requested by the ACU, including by not allowing the ACU to take possession of and/or copy or download information from his Mobile Device(s) and not responding to requests for other information and documentation.

7.5 In the present case, the range of Ineligibility for offences under both Code Articles 2.3.3 and 2.4.6 is prescribed (by Code Article 6.2) as a minimum of six (6) months and a maximum of five (5) years. Additionally, and again for each Article, the Tribunal has the discretion to impose a fine of such amount as it deems appropriate.

A2. (Non-) Application of Code Article 6.3.2

7.6 **Article 6.3.2 of the Code provides** "where a *Participant* is found guilty of committing two offences under the *Anti-Corruption Code* in relation to the same incident or set of facts, then (save where ordered otherwise by the (Panel) for good cause shown) any multiple periods of *Ineligibility* imposed should run concurrently (and not cumulatively)".

¹³ See paragraphs 6.1-6.16 above.

¹⁴ "Directly or indirectly soliciting, inducing, enticing, persuading, encouraging or intentionally facilitating any *Participant* to breach any of the foregoing provisions of this Article 2.3."

¹⁵ Award, paras 5.1 to 5.20. Code Article 2.3.2 makes the following an offence: "Disclosing *Inside Information* to any person where the *Participant* knew or should have known that such disclosure might lead to the information being used in relation to *Betting* in relation to any *International Match*."

¹⁶ "Failing or refusing, without compelling justification to cooperate with any investigation carried out by the ACU in relation to possible *Corrupt Conduct* under the *Anti-Corruption Code* (by any *Participant*), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the ACU (whether as part of a formal *Demand* pursuant to Article 4.3 or otherwise) as part of such investigation."

7.7 ICC submit that the ICC's position is that Mr Ansari's breach of Article 2.3.3 on the one hand, and his breaches of 2.4.6 of the Code on the other, do not "arise in relation to" the same incident (or set of facts):

7.7.1 Mr Ansari's approach to Mr Ahmed was the first relevant incident, concerning his breach of his obligation under the Code not to solicit, induce, entice or encourage another Participant to breach the Code; (what the Panel will call for short "solicitation") and

7.7.2 Mr Ansari's subsequent failures and/or refusals to cooperate with the ACU's investigation were subsequent incidents), concerning his breaches of his separate obligation to cooperate (what the Panel will call for short "non co-operation").

7.8 Accordingly, the ICC submit, while the first and subsequent incidents (or sets of facts) can be said to be related, in that the breach of Code Article 2.3.3 provides the context for the breaches of Code Article 2.4.6 (because Mr Ansari would not have been investigated had he not approached Mr Ahmed), they cannot be said to arise from "the same incident (or set of facts)", and therefore, Code Article 6.3.2 is of no application to Mr Ansari's position and the relationship between his Code Article 2.3.3 offence (charge no. 1) and his Code Article 2.4.6 offences (charges nos. 2 and 3).¹⁷ In consequence it is open to the Tribunal to determine that any periods of Ineligibility should run cumulatively (and not concurrently).

7.9 The Tribunal notes that ICC's submission does not track exactly the language of Article 6.3.2. which makes no use of the phrases "arise from" or "arise in relation to" the same incident or set of facts. To gain the benefit of the Article the Participant must have committed two offences "*in relation to* the same incident or same set of facts" By itself at one juncture deploying the phrase "related to" as the link between the offence and one or other of the two scenarios i.e. same "incident" **or** "set of facts" the ICC comes perilously close to undermining its own position that the Article is not triggered.

7.10 The Tribunal notes, however, that the Code does not define the degree of proximity for the requisite relationship to subsist between offence and incident/facts. There is copious English authority for the proposition that context dictates whether the concept of "relating to" (an analogue of "in relation to") be given a broader or narrower meaning see e.g. Svenska Petroleum Exploration AB v Lithuania 2004 EWCA 1524 at paragraph 137. The context here is of exception to the general rule which would allow the Tribunal a free hand to determine whether periods of ineligibility should run cumulatively or concurrently. Therefore, in the Panel's view, as a matter of principle "in relation to" should be narrowly construed.

¹⁷ For the avoidance of doubt however, the ICC accepts that the Code Article 2.4.6 offences (charges nos. 2 and 3) can be treated as one for the purposes of sanctioning.

7.11 The ICCs submission also does not sufficiently distinguish between the offences on the one hand and the incidents/sets of facts on the other hand. As a matter of ordinary language an offence cannot relate to an incident, if it is itself the incident. As the Tribunal construes Article.6.3.2, in the present case the first incident was the approach to Mr Ahmed; the second incident was the initial refusal to hand over the mobile phone and provide requested information; the third incident was the subsequent refusal to do the same¹⁸. Each incident constituted a separate offence under the Code. So viewed the non-cooperation offences did not sufficiently relate to the same incident as the solicitation offence (or vice-versa); the underlying elements of each were distinct.

7.12 The Tribunal is therefore disposed to agree with the ICC that Mr Ansari is not entitled to the benefit of Article 6.3.2. In summary the non co-operation offences were in a broad sense related to the solicitation offence, since the latter would not have occurred without the former, but in a narrow sense they were not. The offences were intrinsically distinct. In point of fact it is instructive to compare the relationship between the offences in charges 2 and 3 where the relationship is correctly conceded by the ICC to be sufficiently proximate to engage that Article.

7.13 That said the Tribunal is free to take account of the existence of a relationship between the two offences (and their underlying facts) in its determination of any period of ineligibility.

A. FACTORS RELEVANT TO THE PANEL'S DETERMINATION OF SANCTION

7.14 In accordance with Code Article 6.1, where a breach of the Code is upheld by an Anti-Corruption Tribunal, it is necessary for the Tribunal to impose an appropriate sanction upon the Participant from the range of permissible sanctions set out in Code Article 6.2. In determining that sanction, the Tribunal must first determine the relative seriousness of the offence, including identifying any relevant aggravating and mitigating factors (Code Articles 6.1.1 and 6.1.2).

B1. Inherent seriousness of the offences - the starting point

7.15 The ICC submit that both of the offences that Mr Ansari has committed are inherently at the most serious end of offending under the relevant Code Articles, and therefore (before considering any aggravating or mitigating factors), sanctions at the top end of the range of permissible sanctions are the appropriate starting point, i.e. a period of 5 years of Ineligibility in each case:

¹⁸ The Tribunal does not need in the present case to consider what difference is intended to be drawn in the Article between incident and set of facts. Its provisional view is that the former relates to an event, the latter to a course of conduct.

7.15.1 With respect to Mr Ansari's approach to Mr Ahmed, i.e. the Code Article 2.3.3 offence, Mr Ansari sought to elicit information from Mr Ahmed in order to make money by betting. In doing so, not only did Mr Ansari seek to misuse Inside Information, he sought to corrupt Mr Ahmed.¹⁹

7.15.2 With respect to Mr Ansari's failure and/or refusal without compelling justification to cooperate with an investigation carried out by the ACU, i.e. the Code Article 2.4.6 offence, ICC contends that it "goes squarely to one of the imperatives underpinning the Code" (at Code Article 1.1.4): '[I]t is the nature of this type of misconduct [i.e. corruption] that it is carried out under cover and in secret, thereby creating significant challenges for the ICC in the enforcement of rules of conduct. As a consequence, the ICC needs to be empowered ... to require Participants to cooperate fully with all investigations and requests for information.'

7.16 The Tribunal would accept this submission, substituting, to enhance clarity, the phrase "is at odds with" for "goes squarely to".

7.17 The Tribunal has already noted, in the context of its consideration of the meaning of "compelling justification", the analogy to be drawn between Article 2.4.6 of the Code and the anti-doping rule violation of refusal and/or failure to submit to sample collection.²⁰

¹⁹ Neither the ICC nor the Tribunal is aware of any directly analogous precedent, in cricket or any other sport, that addresses a Participant eliciting (or seeking to elicit) Inside Information from another Participant. However, the Tribunal is impressed by previous cases, drawn to its attention by ICC which have more generally spoken to the 'cancer' of corruption in sport – see, e.g., ECB v Kaneria & Westfield, ECB Disciplinary Panel decision dated 22 June 2012 and would accept that such 'cancer' obviously spreads via those who seek to engage others in corrupt activity, so that the corruption of other Participants should be treated particularly seriously. By way of analogy in the context of Inside Information, see 'Misuse of inside information: Policy position paper', Gambling Commission (of Great Britain), 30 August 2018 (a document 'developed as a tool that could be used both internally by the Commission and externally to help guide towards an appropriate response to incidents [of the misuse of inside information] on a case by case basis' (see para 9). Appendix 1 of that document constitutes a scale of seriousness in relation to the misuse of inside information. The closest comparator to Mr Ansari's conduct is 'Cheating and using inside information about the cheat to profit in bets', which is the most serious form of the misuse of Inside Information. Whilst Mr Ansari might not have sought to manipulate (i.e. fix) an event as such (as envisaged in the Gambling Commission's policy paper), his request that Mr Ahmed signal bowling changes would have enabled Mr Ansari to use the information to place bets (which is squarely envisaged as being of the utmost seriousness) and would have manipulated Mr Ahmed's conduct (even if not in a way that would necessarily have impacted the progress or result of any match).

²⁰ Award, para 6.9.

7.18 The ICC submits that that analogy extends to the consideration of sanction, reasoning:

- 7.18.1 In the doping context, an athlete who refuses and/or fails to provide a sample will receive the same sanction as an athlete who intended to cheat by using a prohibited substance i.e., the equivalent to the highest ban that would apply (which, in that context, is four years).²¹
- 7.18.2 It is obvious why this is so, if an athlete could get a smaller ban when he/she has a prohibited substance in his/her system by simply failing and/or refusing to provide a sample, then cheaters could easily avoid proper punishment.²²
- 7.18.3 In the same way, in the anti-corruption context, a failure and/or refusal without compelling justification by a Participant, following a valid Demand, to hand over requested documentation/information - including in particular (where requested) his/her Mobile Device(s) - gives rise to an obvious inference that a Participant has committed another serious anti-corruption offence.²³
- 7.18.4 However, whereas in the anti-doping context there is only one possible relevant offence that can be inferred (namely, presence of a prohibited substance), in the context of the Code a Participant might have committed any one or more of a number of offences set out in the Code.
- 7.18.5 For that reason, it is submitted that the starting point in considering the appropriate sanction for an offence under Article 2.4.6, where a Participant has failed or refused to hand over a Mobile Device following a valid Demand, must be a period of 5 years of Ineligibility.²⁴ This is the minimum sanction for offences under Article 2.1 of the Code, i.e. the most serious corruption offences,²⁵ and it is essential that Participants are offered no incentive not to cooperate with an ACU investigation.²⁶

7.19 The Tribunal considers the ICCs submissions on this point to be highly persuasive and accepts both the anti-doping analogy, *mutatis mutandis*, and the consequent analysis.

²¹ See Articles 2.3 and 10.3.1 of the World Anti-Doping Code 2015.

²² See e.g. *Azevedo v FINA*, CAS 2005/A/925, para 91).

²³ Particularly in light of the protections afforded to Participants under the Code and the ACU Standard Operating Procedures, meaning that privacy concerns cannot amount to "compelling justification" (Award, para 6.12).

²⁴ Mr Marshall's evidence is that a Demand is made for Mobile Device(s) only where that course of action is proportionate i.e. in cases of sufficient seriousness. See Transcript of the hearing of 18 December 2018), p.25 *et seq.* The Tribunal accepts his evidence without reservation.

²⁵ See Code Article 6.2.

²⁶ See further paragraph 7.19. below.

7.20 While the Tribunal notes that the existing jurisprudence does not generally address a failure to hand over a Mobile Device²⁷ it found of considerable assistance an anti-corruption case from the field of tennis PTI0S v Gaviri 30 April 2018 in which a tennis player refused to provide his mobile phone to investigators upon demand (at para 80 *et seq.*) where the esteemed Anti-Corruption hearing officer Richard McLaren said “80. The idea behind TACP provisions on supplying information is based on a principle of those who are innocent have nothing to hide, and inversely by inference, that those who appear to be hiding something possibly may have reasons for doing so ... 82. The gravity of the conduct in breaching F.2.b. and c. at the level of non-cooperation as an offense goes to the very heart of the TACP. The TIU has no coercive investigative powers. It is dependent upon the contractual agreement of the Player to cooperate fully with investigations conducted by the TIU. This principle must be rigorously observed and applied when a Player fails to cooperate. The conduct here is one of the most serious categories of breaches of the TACP that could occur. Furthermore, no justification for the Player's conduct has been proffered at all. 83. A Player who engages in the type of conduct exhibited in this case may well be engaged in a fallback position to receive a lighter charge of non-cooperation to avoid the more serious charges which the TACP provides for up to ineligibility for life. The TACP would be undermined if this is the case ... 85. The gravity of the conduct in failing to make the phone available is aggravated by the failure to complete the interview process. These two matters combine to make this Player's conduct of the most serious nature. Therefore, a penalty at the maximum level is justified in this case” (*emphasis added*). See also the earlier decision of PTIOs v Klec, of the same Anti-Corruption Hearing Officer (also Prof. Richard McLaren) decision dated 21 August 2015.

7.21 Moreover, where the CAS has had cause to consider 'failure to cooperate' offences, it is clear that such offences are considered to be of a serious nature. See, e.g., Moon Joon Chung v FIFA CAS 2017/A/5086 (cited by the ICC previously and referred to at para 6.8 of this Award) and, similarly, Valcke v FIFA, CAS 2017/A/5003, CAS award dated 27 July 2018, at para 266 ('The cooperation of the individuals subject to the ethics or disciplinary rules of a sports association is necessary if the integrity of sport is to be protected ...').

7.22 Further, and particularly in light of the inherent seriousness of the offences, the ICC submits that the Tribunal should weigh heavily the fundamental sporting imperatives undermining the Code (Code Article 1.1) in determining the appropriate sanction - including in particular

²⁷ Moreover, those found guilty of 'failure to cooperate' offences are often simultaneously sanctioned for other offences on an undifferentiated basis.

- (i) deterring others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport),²⁸ and
- (ii) maintaining public confidence in the sport.²⁹

7.23 The Tribunal would accept that submission too but ,while conscious of the need to “send a strong message to other Participants that such offending is to be treated very seriously” as the ICC request, it would not accept that there is a need for a so- called exemplary sentence or that the quantum of sanction should be affected by the fact that this is the first such case; indeed it can see an argument (upon the force of which it need not presently opine) that sanctions might be greater in later cases on the same offence on the basis that the deterrent has hitherto proved inadequate.

B2. Aggravating factors

7.24 The ICC submits the following are aggravating factors that apply to Mr Ansari's offences under both Code Articles 2.3.3 and 2.4.6:

7.24.1 Mr Ansari is a very experienced Participant, having been closely involved with cricket as both a player and a coach for around 30 years. He has also received anti-corruption training. Therefore, his misconduct cannot be attributed in any way to either naivety or the folly of youth.

7.24.2 In his position as a coach, and particularly in his capacity as an age-group level coach, Mr Ansari should have acted at all times as a role model.³⁰

7.24.3 Lack of remorse.

²⁸ See, e.g., ICC v Butt, Asif and Amir, Anti-Corruption Tribunal decision dated 5 February 2011 (, para 217, 'We must take account of the greater interests of cricket which the Code itself is designed to preserve and protect. There must, we consider, be a deterrent aspect to our sanction.'

²⁹ See e.g., in relation to the point of principle, Bolton v Law Society [1994] 1 W.L.R. 512 (at 518, 'To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission ... A profession's most valuable asset is its collective reputation and the confidence which that inspires'. Also, in the sporting context, Bradley v Jockey Club [2005] EWCA Civ 1056 (at para 24, 'Where an individual takes up a profession or occupation that depends critically upon the observance of certain rules, and then deliberately breaks those rules, he cannot be heard to contend that he has a vested right to continue to earn his living in his chosen profession or occupation. But a penalty which deprives him of that right may well be the only appropriate response to his offending.'

³⁰ See Butt v ICC, CAS 2011/A/2364 (, award dated 17 April 2013, para 74 (sanction imposed on Salman Butt 'could reasonably be described as lenient, given that Mr Butt was captain of the Pakistan Test Match cricket team at the time and he had a responsibility as role model...').

7.25 The ICC submits that Mr Ansari's breach of Code Article 2.4.6 is inherently serious. However, in respect to the Code Article 2.3.3 offence, the ICC also identifies the following specific additional aggravating factors:

7.25.1 The approach by Mr Ansari was clearly pre-meditated i.e. Mr Ansari specifically contacted Mr Ahmed in order to meet with him that evening to make a corrupt approach.³¹

7.25.2 Mr Ansari and Mr Ahmed were friends, and Mr Ansari sought to abuse that friendship for his own gain. Moreover, the approach placed Mr Ahmed in an extremely difficult position, leaving him upset and angry on the eve of an International Match, as the Tribunal would accept as being both consistent with his evidence and with common sense.

7.25.3 Were Mr Ahmed to have acceded to the request to provide Mr Ansari with Inside Information, Mr Ansari would have succeeded in corrupting a Participant playing at the very highest level of the sport and one of its biggest names (a captain of a major cricketing nation), which would have had the obvious potential to very seriously undermine the integrity of cricket. This aspect of Mr Ansari's conduct goes to the very heart of the Code.³²

7.25.4 Mr Ansari's suggestion at the hearing found by the Tribunal to be 'wholly unconvincing'.³³ that Mr Ahmed would seek to sully his character by making (and leaking) false allegations of corruption against him in order to deflect from Mr Ahmed's (alleged) poor performances on the field of play was entirely baseless and naturally offensive to Mr Ahmed.

7.26 The Tribunal would accept all these points without gloss, qualification or elaboration.

B3. Mitigating factors

³¹ At the hearing Mr Ansari said that there was 'no specific reason to meet him, it was just casual, and we've met casually like this on multiple occasions' (see transcript of the hearing of 18 December 2018, at p.44). The ICC submits, given the Panel's factual findings (at para 5.19 of the Award), that that account is highly improbable and that it can infer that Mr Ansari contacted Mr Ahmed specifically in order to make the corrupt approach to him on the evening of 17 October 2017. The Panel is prepared to draw that inference.

³² Per Code Article 1.1.2, one of the fundamental sporting imperatives underpinning the Code is as follows: "*Public confidence in the authenticity and integrity of the sporting contest is ... vital. If that confidence is undermined, then the very essence of cricket will be shaken to the core.*"

³³ Award, paragraph 5.11.

7.27 The ICC notes and the Tribunal accepts that Mr Ansari has no previous disciplinary record being a mitigating factor that is applicable to Mr Ansari's offences under both Code Articles 2.3.3 and 2.4.6.

8. CONCLUSION

8.1 The ICC asks the Tribunal to impose on Mr Ansari such periods of Ineligibility as it sees fit in respect of (i) Mr Ansari's breach of Code Article 2.3.3, and (separately) (ii) Mr Ansari's breaches of Code Article 2.4.6 having due regard to the circumstances of the case.

8.2 For all the foregoing reasons set out in paragraph 7 the Tribunal considers that 5 years for the Article 2.3.3 offence and 5 years (consecutive to each other) for the Article 2.4.6 offences would be appropriate. ie 10 years in all. In accordance with Code Article 6.4, Mr Ansari's period of provisional suspension from 9 May 2018 is to be credited against that period of Ineligibility.³⁴

8.3 The Tribunal appreciates that this is the maximum sanction in terms of ineligibility vouched for by the Code but the seriousness of the offences enhanced by substantial aggravating factors against which there is but a single and minor mitigating factor to be set off, justify the conclusion that it is appropriate. The fact that it is possible to envisage offences against each Article of even greater gravity than Mr Ansari's does not of itself compel a reduction below the maximum in his case. Cricket would, in the Tribunal's view, be better off without Mr Ansari's participation for the period it has determined.

8.4 As a general principle, the ICC submits that a fine would also be appropriate for breaches of Code Articles 2.3.3 and 2.4.6. However, in the circumstances of this case, and in particular because:

- (i) it is understood that Mr Ansari does not earn his living from cricket,
- (ii) there is no evidence before the Panel as to Mr Ansari's means, and
- (iii) there is no evidence that Mr Ansari profited from his misconduct

The ICC does not seek the imposition of a fine on (or any costs order against) Mr Ansari.

8.5 The Panel sees no reason to be harsher than the prosecutor.

The Honourable Michael J Beloff QC Chair
The Honourable Mr Justice Winston Anderson, JCCJ
John McNamara
as from Dubai 19 February 2019

³⁴ See Notice of Charge.