

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

between:

THE INTERNATIONAL CRICKET COUNCIL

and

MR NUWAN ZOYSA

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Award

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1. INTRODUCTION

1.1 The International Cricket Council (“ICC”), the international federation responsible for the global governance of the game of cricket, has charged Mr Nuwan Zoysa, (“Mr Zoysa”)<sup>1</sup>, a Sri Lankan national, with the following offences under the ICC Anti-Corruption Code for Participants (“the ICC Code”):

- a. Breach of ICC Code Article 2.1.1 (*“Fixing or contriving in any way or otherwise influencing improperly, or being a party to any agreement or effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match, including (without limitation) by deliberately underperforming therein”*);

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<sup>1</sup> Mr Zoysa is an ex-international cricketer of considerable standing. He made his debut for Sri Lanka in 1997 and went on to play for Sri Lanka on 125 occasions (30 Test matches and 95 ODIs). He is a fast-medium bowler and he was the first player in Test history to take a hat-trick off his first three balls in a Test match (against Zimbabwe in 1999). He is now aged 42.

- b. Breach of ICC Code Article 2.1.4 (*“Directly or indirectly soliciting, inducing, enticing, instructing, persuading, encouraging or intentionally facilitating any Participant to breach any of the foregoing provisions of this Article 2.1”*); and
- c. Breach of ICC Code Article 2.4.4 (*“Failing to disclose to the ACU (without unnecessary delay) full details of any approaches or invitations received by the Participant to engage in Corrupt Conduct under the Anti-Corruption Code”*).

The ICC relies for this purpose, in so far as necessary, on ICC Code Article 2.5.1: *“Any attempt by a Participant, or any agreement by a Participant with any other person to act in a manner that would culminate in the commission of an offence under the Anti-Corruption code, shall be treated as if an offence had been committed, whether or not such attempt or agreement had in fact resulted in such offence.”*

1.2 Mr Zoysa denies the first two charges<sup>2</sup> and, subject to his arguments on jurisdiction, admits the third.

## 2. JURISDICTION

2.1 Mr Zoysa contends that, as a Sri Lankan citizen, for an international body (such as the ICC) to exercise jurisdiction over him, he must make an express submission to the jurisdiction of such body (for example by an arbitration agreement). Mr Zoysa acknowledged that his contract with Sri Lanka Cricket (“SLC”) dated 28 December 2017 bound him *“to adhere to all Rules & Regulations of SLC and its Code of Conduct”* but argued that this bound him only to SLC (and its code of conduct) and not to the ICC Code *“except in certain given international situations expressly provided for under contract”*. Mr Zoysa further argued that his alleged offences did not relate to an *“International Match”* and, therefore, that he is subject only to the jurisdiction of the Sri Lankan authorities and not that of the ICC.

2.2 The Tribunal finds that Mr Zoysa is subject to the ICC Code, and that the Tribunal has jurisdiction over this matter, for the following reasons:

- (i) At all times relevant to the charges which Mr Zoysa faces in these proceedings he was employed by the Sri Lankan national cricket association, SLC, as an assistant bowling coach for Sri Lanka's national team based at SLC's high performance centre at the R Premadasa Stadium in Colombo, Sri Lanka.
- (ii) By virtue of his employment contract with SLC dated 28 December 2017, Mr Zoysa expressly agreed to be bound by "all Rules & Regulations of SLC and its Code of Conduct", which includes SLC's Anti-Corruption Code (the "SLC Code").
- (iii) The SLC Code provides at Article 1.6 that, "A Participant shall also be bound by the anti-corruption rules of the ICC ". Mr Zoysa was therefore bound to the ICC Code by incorporation through his express agreement with SLC.
- (iv) The ICC Code at Article 1.4.2 provides that Player Support Personnel (a category of Participant) include "any coach...", which Mr Zoysa was (see (i) above).
- (v) Accordingly, Mr Zoysa, as a Participant, was subject to the obligations imposed by Article 1.5 of the ICC Code.
- (vi) Under Article 1.5, the ICC Code requires Participants:

*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 to familiarize 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)*

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<sup>2</sup> In respect of the charges, the ICC Code effective from 9 February 2018 governed procedural matters but the ICC Code effective from 1 September 2017 governed substantive matters.

*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)...”*

- (vii) The charges made by ICC against Mr Zoysa relate to planned International Matches between (a) Sri Lanka and (b) Bangladesh and/or Zimbabwe (see the Tribunal’s further analysis on this issue set out in paragraph 11 below).
- (viii) A Sri Lankan citizen is not prevented by the Sri Lankan Constitution from agreeing to submit to the jurisdiction of a body such as the ICC.

2.3 As a subsidiary argument, Mr Zoysa argued that, in relation to the applicable procedure, burden and standards of evidence to be applied to the investigation of his actions and these proceedings, those of the Sri Lankan legal regime should be applied. An analogous argument (though couched in terms that the ICC in exercise of its jurisdiction should respect the norms provided by the constitution of a member state - in that case Zimbabwe - rather than that the ICC’s own jurisdiction was ousted) was dismissed by a Tribunal in the case of *ICC v Mr Enock Ikope* (5<sup>th</sup> March 2019, “**Ikope**” - see paras 6.16-6.19 of the Award in that case).

2.4 This Tribunal adheres to and adopts, *mutatis mutandis*, the reasoning in *Ikope*. It emphasises the following points:

- (i) Mr Zoysa’s subsidiary argument fails to recognise that rights can be waived. It was accepted by Mr Zoysa that the Sri Lankan Constitution does not prohibit adherence to international agreements, which confer jurisdiction over Sri Lankan citizens on non-Sri Lankan entities<sup>3</sup>.
- (ii) It is at odds with Article 11.5 of the ICC Code which specifies that it “*is governed by and shall be construed in accordance with English law*”. As the CAS has recently explained, the purpose of such a governing law clause in an international federation's rules “*is to ensure the uniform interpretation of the standards of the [sport]*”

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<sup>3</sup> See Mr Zoysa’s Answer, para 3.

*worldwide*"<sup>4</sup>. There is therefore no scope for the application of Sri Lankan law, whether arising from the Constitution or otherwise, to Mr Zoysa's case.

- (iii) It would, were it correct, put at risk Sri Lanka Cricket's membership of the ICC<sup>5</sup> since a sport such as cricket, which is played all over the world, "*is a global phenomenon which demands globally uniform standards. Only if the same terms and conditions apply to everyone who participates in organised sport, and the same rules given the same meaning and legal effect*" albeit in different jurisdictions<sup>6</sup>.

### 3. PROCEDURAL HISTORY

3.1 In September 2018, the ICC Anti-Corruption Unit ("ACU") received a report, originating from Sri Lankan international cricketer, [Player B], that Mr Zoysa had asked him if he would get involved in fixing a match.

3.2 On 2 October 2018, and again on 9 October 2018, the ACU interviewed Mr Zoysa.

3.3 On 31 October 2018, pursuant to those interviews, the ICC sent a Notice of Charge to Mr Zoysa, charging him with the offences under the ICC Code listed in paragraph 1.1 above, and provisionally suspended him pending resolution of the charges.

3.4 On 13 November 2018, Mr Zoysa responded to the Notice of Charge via his lawyers, (i) denying each of the charges for lack of jurisdiction and/or on their merits (but making

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<sup>4</sup> Valcke v FIFA, CAS 2017/A/5003, para 147.

<sup>5</sup> SLC is a member federation of the ICC.

<sup>6</sup> Peñarol v. Bueno, Rodriguez & PSG, CAS 2005/A/983 & 984, para 24), translation set out in Haas, *Applicable Law in Football-Related Disputes*, [2016] (1) I.S.L.R. 9, 13. CONI, CAS 2000/C/255, para 56) In Foschi v FINA, CAS 96/156, para 10.2.4 CAS rejected an argument that appeal from a decision of a national panel should be determined by reference to the law of that nation, on the basis that "*an international federation deals with national federations and athletes from all over the world and it has to treat them on an equal basis. It therefore has to apply the same law to all of them. It is unacceptable that, based upon the same facts, different results might be reached depending on the law applied*".

a contingent admission in respect of the charge under ICC Code Article 2.4.4) and (ii) requesting a hearing on his application to have his provisional suspension lifted.

3.5 On 3 September 2019, following a period during which further investigations were made in respect of Mr Zoysa's conduct<sup>7</sup>, and during which the parties remained in correspondence, the matter was referred to the Chairman of the ICC Code of Conduct Commission<sup>8</sup> ("the **CCC Chairman**") with a request for a hearing for (i) directions to resolve procedural issues between the parties relating to disclosure and (ii) the determination of Mr Zoysa's challenge to jurisdiction and his provisional suspension.

3.6 On 12 September 2019, a directions hearing took place, following which the CCC Chairman received short written submissions on behalf of the respective parties.

3.7 On 20 September 2019, the CCC Chairman ruled that (i) Mr Zoysa qualified as a Participant and so is bound by the ICC Code and (ii) accordingly the ICC had jurisdiction over Mr Zoysa under that Code<sup>9</sup>. Furthermore, the CCC Chairman declined to lift the provisional suspension imposed upon Mr Zoysa on the basis that the integrity of the sport could be seriously undermined if Mr Zoysa, having been properly charged, was permitted to continue to participate before the charges against him are finally resolved.

3.8 On 9 October 2019, the parties agreed a procedural timetable for the exchange of briefs up to a hearing to be held by video conference, which timetable was approved on 10 October 2019 by the Chairman of the Anti-Corruption Tribunal ("**ACT Chairman**").

3.9 On 8 November 2019, the ICC sent an amended Notice of Charge to Mr Zoysa (along with its Opening Brief, filed on the same date as part of the agreed procedural

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<sup>7</sup> Separate charges were issued against Mr Zoysa on 9 May 2019 under the Emirates Cricket Board Anti-Corruption Code. These charges are currently the subject of separate proceedings under that Code.

<sup>8</sup> Acting both in his capacity as CCC Chairman (for the purposes of ICC Code Article 4.7.2) and as ACT Chair appointed to hear this case (for the purposes of ICC Code Article 5.1.3).

<sup>9</sup> Certain jurisdictional arguments were reprised and others were freshly advanced before the Tribunal at the hearing which took place on 11 and 18 September 2020 (see generally paragraph 2 above).

timetable). Mr Zoysa filed his Answer on 30 December 2019, and the ICC filed a Reply Brief on 31 January 2020.

3.10 Because of (i) Mr Zoysa's Counsel's unavailability on the dates originally proposed, and (ii) the disruption caused by the Covid-19 pandemic, it was not possible to arrange a hearing of any kind within a reasonably short time thereafter.

3.11 On 11 September 2020, a hearing by video conference was held but the matter had to be stood over to be completed on 18 September 2020.

3.12 On 16 September 2020, pursuant to further directions by the ACT Chairman, Mr Zoysa served Supplementary Submissions and a full witness statement.

3.13 On 18 September 2020, the hearing by video conference was concluded.

3.14 On 13 November 2020, the Tribunal handed down a summary of its conclusions but indicated that, in light of an overlap between certain jurisdictional issues in the present case and that of *ICC v Dilhara Lokuhettige*, it would postpone handing down of its reasons until conclusion of the arguments in the latter case, which occurred on 11 December 2020.

#### **4. THE ICC CASE**

4.1 The ICC's case, epitomised in its amended charge and developed in its Opening Brief and Reply Brief, was essentially as follows:

##### *Sequence of events ("narrative")*

4.1.1 In or around April 2017, Mr Zoysa was introduced by [Mr V] [redacted], to an Indian gentleman called [Mr W] at a racecourse in Colombo. In introducing [Mr W] to Mr Zoysa, [Mr V] told Mr Zoysa that [Mr W] was someone through

whom Mr Zoysa and he ([Mr V]) could earn money, and all Mr Zoysa had to do was to “*get players*” for [Mr W].

- 4.1.2 [Mr V] told Mr Zoysa that lots of players were getting involved in earning money outside of their playing contracts and asked therefore why Mr Zoysa shouldn't also get involved. [Mr V] told Mr Zoysa that all he needed to do was introduce one or two players and then both could earn some money out of it.
- 4.1.3 When Mr Zoysa met with [Mr W], the latter suggested that he could get Mr Zoysa a coaching role in the Afghanistan Premier League (the “**APL**”) if he was interested, and then subsequently at the Bangladesh Premier League if his time at the APL went well.
- 4.1.4 In light of the conversations Mr Zoysa had with [Mr V] and [Mr W], he believed that [Mr W] was involved in fixing matches, or aspects of matches<sup>10</sup>, and that he ([Mr W]) wanted to get Mr Zoysa involved because, as a coach, Mr Zoysa knew players and therefore would be able to get players to help [Mr W] fix matches.
- 4.1.5 When shown a photograph of a bookie/fixer known to the ACU, Mr Zoysa confirmed that this was the [Mr W] whom he had met and with whom he had numerous conversations.
- 4.1.6 Following Mr Zoysa's initial introduction to [Mr W], [Mr W] subsequently called Mr Zoysa on numerous occasions during which he asked Mr Zoysa to get some players for him, which Mr Zoysa understood to be a request for him to approach players to fix aspects of matches for [Mr W]. On at least one occasion, [Mr W] told Mr Zoysa to get bowlers in the team which Mr Zoysa was coaching to give away 12-15 runs in an over of a specific match.

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<sup>10</sup> In this Award, match fixing will be taken to include spot fixing.



- 4.1.7 In particular, in his conversations with Mr Zoysa, [Mr W] asked Mr Zoysa to approach three specific Sri Lankan players, Messrs [Player A] (on repeated occasions), [Player B] and [Player C].
- 4.1.8 At [Mr W]'s request, Mr Zoysa approached [Player A] late in 2017 and asked him whether, in connection with Sri Lanka's then upcoming series against Bangladesh and/or Zimbabwe, he would be willing to give away 12-15 runs in an over while bowling, or to get out deliberately when batting. Mr Zoysa told [Player A] that he could get good money if he underperformed in this way. [Player A] immediately refused that approach and told Mr Zoysa that he wouldn't agree to do that.
- 4.1.9 Following the T10 event which took place in the UAE in December 2017, [Mr V] contacted Mr Zoysa and asked him whether he had been contacted by [Mr W], whether [Mr W] had discussed any particular matches with him, and whether he had any players. Mr Zoysa told [Mr V] that he couldn't discuss such things, but [Mr V] told him to get some players and earn some money.
- 4.1.10 On 24 September 2018, at [Mr W]'s request, Mr Zoysa also approached [Player B]. This approach took place in Mr Zoysa's car, outside [Player B's] house. In this conversation, Mr Zoysa asked [Player B] whether he wanted to play in the APL as Mr Zoysa knew someone who could get him into a team in the APL. Mr Zoysa told [Player B] that all he would have to do in exchange would be to take direction from this person as to how he played in the event. [Player B] promptly refused to get involved.
- 4.1.11 Mr Zoysa's contact with [Mr W] continued right up until late September 2018 when [Mr W] contacted him and asked him if he knew any Sri Lankan players who would do something (i.e. fix) in the upcoming England series.

*Evidence relied on*

- 4.2 The ICC, to establish the above narrative, relied on (i) statements and admissions said to be made by Mr Zoysa during interviews ("the interviews") conducted by Messrs Alex Marshall and Steven Richardson ("Mr Richardson") of the ACU on 2 October 2018, and the interview conducted by Mr Richardson and Ms Stephanie McCormick of the ICC's

ACU Unit on 9 October 2018, which were both recorded by audio and video, and (ii) on the evidence of [Player A] and [Player B] as provided to the ACU.

*The Tribunal's assessment*

4.3 Under the ICC Code Article 3.1, the burden is on the ICC to establish each of the elements of the charges against Mr Zoysa to the comfortable satisfaction of the Tribunal, bearing in mind the seriousness of the allegations made<sup>11</sup>.

4.4 To that end, under Article 3.2.1 of the ICC Code, facts may be established by any reliable means, including (most relevantly in this case) admissions by a party<sup>12</sup>.

4.5 The Tribunal both saw and heard the recordings of the interviews. It also heard evidence from [Player A], [Player B] and Mr Richardson which were set out in the transcript of the two-day hearing<sup>13</sup> ("the ICC material").

4.6 The Tribunal considered that, taking the ICC material into account the ICC had substantially established its narrative, at any rate sufficiently to make good the charges<sup>14</sup>. As it will proceed to explain, the Tribunal was not persuaded to a different conclusion by Mr Zoysa's evidence or arguments.

## **5. MR ZOYSA'S CASE**

5.1 Mr Zoysa's case, additional to his jurisdictional objections, as set out in his Answer and developed in his Supplementary Submissions was, at its widest, essentially as follows:

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<sup>11</sup> Article 3.1 of the ICC Code states: "Unless otherwise stated elsewhere in this Anti-Corruption Code, the burden of proof shall be on the ICC in all cases brought under the Anti-Corruption Code and the standard of proof shall be whether the Anti-Corruption Tribunal is comfortably satisfied that the alleged offence has been committed, bearing in mind the seriousness of the allegation that is being made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt".

<sup>12</sup> Article 3.2.1 of the ICC Code states: "The Anti-Corruption Tribunal shall not be bound by rules governing the admissibility of evidence in judicial or other proceedings. Instead, facts may be established by any reliable means, including admissions or circumstantial evidence".

<sup>13</sup> That of 11 September is called T1; that of 18 September is called T2.

<sup>14</sup> See the Appendix to this Award where the ICC's detailed allegations are considered with reference to the transcripts of the interviews.

- 5.1.1 The case against him is contrived and the product of collusion between the ICC officials and certain Sri Lanka politicians (“the collusion point”) (see paragraph 6 below).
- 5.1.2 The case against him is wholly invalidated by the fact that he was initially cautioned for the purposes of his interviews under the non-applicable Afghanistan Anti-Corruption Code (“AAC”) (“the Afghanistan point”) (see paragraph 7 below).
- 5.1.3 The evidence of [Player B] was inadmissible since Mr Zoysa’s approach is to him not the subject of any charge (“inadmissibility point”) (see paragraph 8 below).
- 5.1.4 While he admits meetings with [Mr V] and [Mr W] he denied any discussion of match fixing but only of career opportunities for players (“the career opportunities point”) (see paragraph 9 below).
- 5.1.5 While he admits meetings with [Player A] and [Player B] he admits to having general discussions but denies asking them to be involved in match fixing (“the hypothetical discussion point”) (see paragraph 10 below).
- 5.1.6 In any event if (*quod non*) he asked either to be involved in match fixing he never identified any particular International Match or Matches, so that an essential ingredient of the offences was not established (the “Any International Match point”) (see paragraph 11 below).
- 5.1.7 He should not, for a variety of reasons, be held to have made admissions of the matters charged save as to the third (“the no admissions point”)<sup>15</sup> (see paragraph 12 below).

*Evidence relied on*

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<sup>15</sup> See in the Answer, para 12, where Mr Zoysa states that “during the interview under duress the ICC ACU put direct questions suggesting the answers and got Mr Zoysa to admit things **he did not understand and did not mean to admit against the Principles of natural justice.**” At para 24 Mr Zoysa states that “the burden of proof of the above baseless allegations are with the ICC and Mr Zoysa has not admitted any of the said allegations and the interviews and the contents of the interviews conducted by the ICC under duress, coercion, without an interpreter or the assistance of an Attorney-at-Law for Mr Zoysa cannot be relied upon.”

5.2 Mr Zoysa relied on his own evidence in two affidavits as well as documents attached to the Supplementary Statement (“the Zoysa material”).

*The Tribunal’s assessment*

5.3 The Tribunal read that material and heard evidence from Mr Zoysa.<sup>16</sup> It was, as already indicated, not persuaded to depart from its conclusion based on the ICC material. It now examines each of his points in order.

**6. THE COLLUSION POINT**

6.1 The Supplementary Submission states at para 4: *“It is our submission that these purported “charges” are trumped up and not quite what they appear to be ex facie, that the two ICC ACU Officials in Colombo whose conduct we have questioned, did not suddenly “discover” an attempted violation of the ICC CODE (as they would in a ICC sponsored international game); but they were part of a more concerted and collusive attempt involving Sri Lanka Cricket (SLC) and the domestic politics that (unfortunately) operates in it, that these contrived “investigations” resulted in making scapegoats of simple, unassuming players like Mr. Zoysa to cover-up the actual culprits and the faults of SLC and the political administration, also facilitating a more lucrative (and surreptitious) activity for these two ICC ACU Officials for their own personal benefit leaving aside the actual mandate of the ICC and the more noble cause of protecting this “game of gentlemen””*.

6.2 These are serious allegations which would need compelling evidence to support them. In the absence of any such evidence the Tribunal rejects them. Even assuming some politicisation of Sri Lanka cricket, there is simply no evidence that the ICC were dancing to the tune of any faction. In particular, the way in which the ACU became aware of the allegations of [Player B] and [Player A] by itself contradicts any such suggestion.<sup>17</sup> The ACU was the passive recipient of, not the active researcher for their, evidence. In this context the statement of [Player B] correlates exactly with that of Mr Richardson, and the Tribunal accepts both. In any event the Tribunal see no reason to doubt Mr Richardson’s good faith as an experienced and respected investigator.

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<sup>16</sup> Recorded and read in T2.

<sup>17</sup> Mr Richardson’s witness statement explains this at paras 3 and 13.

## 7. THE AFGHANISTAN POINT

7.1 It is accepted that Mr Zoysa was twice cautioned on 2 October 2018 on the basis that the AAC was applicable. The AAC was in force by the time of the October interviews, but not at the time Mr Zoysa approached [Player B]; no charge was brought against Mr Zoysa in respect of that approach. Moreover, the AAC was not relevant to Mr Zoysa's approach to [Player A]. It is suggested that by virtue of the inaccuracy of the 2 October cautions<sup>18</sup> all that transpired thereafter in terms of the disciplinary process to which Mr Zoysa was made subject was invalid and the charges brought under the ICC Code could not stand.

7.2 The Tribunal cannot accept this. The fact that a caution was given by reference to a Code (which was is all material particulars identical to the ICC Code) cannot invalidate charges brought expressly under the ICC Code. This is so, not least of all because neither of the two Codes, as distinct from good practice, required a caution at all. In consequence the administering of a correct or indeed any caution was not a condition precedent to the bringing of charges based, *inter alia*, on admissions said to be made during interviews conducted after such caution. What good practice required was the giving of a clear warning of the nature of the interview and of an opportunity for Mr Zoysa to obtain legal advice. The Tribunal is satisfied that this was done.

7.3 Nor, in the Tribunal's view can it sensibly be said that Mr Zoysa's statements made in such interviews were somehow deformed or made inaccurate by the fact that the caution, whose substance was crystal clear, was inadvertently administered by reference to the wrong Code. Mr Zoysa himself gave no evidence to support any such hypothesis. Had he done so this might have raised a question of the weight to be given to his statements in interview rather than to their admissibility. It also bears mention that Mr Zoysa was, by virtue of his acceptance of the SLC Code, bound by the AAC in certain circumstances (see Articles 1.6 and 1.7 of the SLC Code).

7.4 In short, in the Tribunal's view, there is no merit in the Afghanistan point.

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<sup>18</sup> The 9 October caution was administered by reference to the ICC Code.

## 8. THE INADMISSIBILITY POINT

8.1 The ICC relies upon Mr Zoysa's approach to [Player B] only to demonstrate Mr Zoysa's disposition towards engaging in exactly the kind of corrupt conduct that underlies the charges against him in these proceedings, rather than, for reasons already explained, as itself the basis for a charge<sup>19</sup>.

8.2 In the Tribunal's view the evidence of, and relating to, [Player B], was admissible under the ICC Code Art 3.2.1. This provides that "*The Anti-Corruption Tribunal shall not be bound by rules governing the admissibility of evidence in judicial or other proceedings. Instead, facts may be established by any reliable means including admissions and circumstantial evidence*".

8.3 The Tribunal is confirmed in this view in the light of Art 11.5 which provides that, "*The Anti-Corruption Code is governed by and shall be construed in accordance with English law*". Under English law, bad character evidence is characteristically adduced in English criminal proceedings under section 101 of the Criminal Justice Act 2003 ('CJA 2003') for the purpose of demonstrating the disposition of the accused towards engaging in the kind of criminal conduct of which he is accused.

8.4 The Tribunal notes that Article 11.5 of the ICC Code does not expressly engage s101 of the CJA 2003 (a specific criminal law statute). However, in the Tribunal's view, if in English criminal law such evidence is admissible, as it is, it may, by analogy, be reasonably regarded as a 'reliable means' of establishing the facts in dispute in disciplinary proceedings (see *ICC v Ahmed, Ahmed, and Amjad*, 16<sup>th</sup> July 2019, paras 17 and 46-49).

## 9. THE CAREER OPPORTUNITIES POINT

9.1 The key meetings of Mr Zoysa with [Mr W] and [Mr V] are admitted but precisely what was said at these meetings is less clear. In his original brief affidavit at paras 26 and 27, Mr Zoysa stated that [Mr W] only asked him to introduce players for career

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<sup>19</sup> See para 7.1 above.

opportunities and that he never discussed match fixing with him at all. He has retreated from that position (although he has been unable to explain why he made such statements in the first place).

9.2 Mr Zoysa has now admitted that [Mr W] (and [Mr V]) made a corrupt approach to him (as is consistent with the evidence he gave in the interviews).

9.3 Furthermore, in the Tribunal's view, Mr Zoysa's admission of a breach of Article 2.4.4 makes no sense unless he was the recipient of such corrupt approaches. His demeanour as witnessed in the video recordings coupled with his expressions of regret and remorse support such a conclusion.

9.4 Finally, the corrupt approaches which Mr Zoysa made to [Player A] and [Mr V] (as to which see paragraph 10) were themselves said to be the sequel to the corrupt approaches earlier made to him. There is no evidence to suggest that they were spontaneous initiatives of Mr Zoysa unprompted by any third party.

## **10. THE HYPOTHETICAL DISCUSSIONS POINT**

10.1 Mr Zoysa's revised fallback position is that he made no corrupt approach to any player and that his discussion of match fixing was on an entirely theoretical and hypothetical plane. Whilst it is open for individuals to discuss match fixing in a theoretical manner, the Tribunal is not inclined to accept that such an argument is open to Mr Zoysa, given (i) the surrounding admissions made by Mr Zoysa in his interviews with ACU about (a) [Mr W]'s approaches, and (b) the reasons why he approached [Player A], (ii) that, as elaborated below, this argument is inconsistent with the evidence of both [Player B] and [Player A], who clearly did not believe that they were involved in hypothetical discussions.

10.2 In the Tribunal's view the unambiguous statements of [Player B] and [Player A], if accepted, are by themselves sufficient to inculcate Mr Zoysa (if it be accepted that there

need be no reference in any corrupt solicitation to a specific International Match or Matches, as to which see paragraph 11 below).

10.3 The Tribunal is disposed to accept those statements which in interview Mr Zoysa came close to conceding. There is no evidence that either author of such statements had any motive to make false allegations against Mr Zoysa. Indeed, [Player B] appears to have been his friend<sup>20</sup>.

10.4 [Player A] was a less engaged witness but the challenge to his integrity based on his apparent endorsement of what is now accepted to be a mistranslation of an email from Mr Lokuhettige (the Respondent in separate proceedings to which [Player A]'s witness statement also referred) sent on 18 September 2017,<sup>21</sup> did not, in the Tribunal's view, lead anywhere. It betrayed, at most, a casual attitude towards his responsibilities as a witness. The inaccurate translation by itself does not inculcate Mr Lokuhettige; the accurate translation does not exculpate him.<sup>22</sup> The time and effort spent in the hearing over this matter seem to have been little more than a diversion from the real issue.

10.5 There is no evidence that either witness was offered a deal for his evidence. The suggestion to the contrary was convincingly denied by Mr Richardson<sup>23</sup> and is certainly inconsistent with the way in which [Player B] approached the ICC via his agent.

10.6 The reason why neither of the two witnesses was charged has also been plausibly explained by Mr Richardson namely that: in the view of the ICC it was not in the interest of cricket to charge them. Any allegation of inequity of treatment of Mr Zoysa on the

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<sup>20</sup> T1 p.30

<sup>21</sup> T1 p.37ff.

<sup>22</sup> The Sinhalese words were "*Ara wade atha arala daamus. Mata welawak neha im going to ausi*". The original translation of the first sentence was "*We will do this work*"; the revised and authorised translation was "*Let's give up this job*". Both translations ended "*I'm going to Australia. I don't have time*".

<sup>23</sup> Richardson WS para 34.



one hand and [Player A] on the other might go to mitigation but has no bearing on whether Mr Zoysa committed the offence alleged.

## **11. THE 'ANY INTERNATIONAL MATCH' POINT**

11.1 In the Tribunal's view, Articles 2.1.1 and 2.1.2 containing the phrase "*any International Match*" does not require identification of a **specific** International Match or Matches provided that the person charged took, or within the meaning of Article 2.5.1, attempted to take, any step which, had the attempt proceeded, would have culminated in the fixing or improper influencing of an International Match. The reference to "**any** International Match" is general. It was not intended to be a loophole through which corruption and improper influence could be enabled.

11.2 In the case of Mr Zoysa, the Tribunal is satisfied that, by Mr Zoysa's own admissions at his ACU interviews, he approached [Player A] to "*get*" [Player A] to fix International Matches between Sri Lanka and Bangladesh and/or between Sri Lanka and Zimbabwe. It is common ground that these particular International Matches were not expressly mentioned during the discussions between Mr Zoysa and [Player A]. However, the Tribunal is satisfied that had [Player A] not immediately rejected the approach, it was in all the circumstances those matches for which Mr Zoysa would have made arrangements to fix. As such, Mr Zoysa made an attempt which, had it proceeded, would have culminated in the fixing of an International Match or of International Matches.

11.3 A purposive approach to the meaning of Articles 2.1.1 and 2.1.2 is required by both general principle (see *QFA v FIFA CAS2012/A/2742* para 197), as well as the specific provision in Art 1.2 of the ICC Code. Considering the mischief to which the ICC Code is directed, i.e., corruption (see generally Art 1,) it cannot make any sensible difference from that perspective if someone in Mr Zoysa's position solicits an international player to throw away his wicket in unspecified or specified "International Matches"; the solicitation in either case is equally corrupt.

11.4 The proferentem rule-construing an ambiguity against the author of the ICC Code would only be applicable, if **after** giving a purposive construction to the rule, any

ambiguity remained. There is no such ambiguity here present. The ICC Code is intended to stamp out corruption in cricket including the making of corrupt approaches to players in the game.

11.5 The main, if not the sole, use of the references to “*any International Match*” is to identify the matches over which the ICC has disciplinary jurisdiction (i.e., international ones) as contrasted with those over which a national body has such jurisdiction (i.e., domestic ones) (see ICC Code Note in box under 1.4.3, p.4).

## 12. THE NO ADMISSIONS POINT

(i) Doctoring?

12.1 In the Tribunal’s view there is no evidence that the recording or transcribing of the interview, processes which were clearly explained by Mr Richardson<sup>24</sup>, have been in any way tampered with. This is again a serious allegation, since any tampering could only have been effected by the ACU prior to the transfer of the recordings to the transcription company Transperfect or at its direction after such transfer, and would require compelling evidence to sustain it.

12.2 The one example where Mr Zoysa claimed that his words had not been faithfully transcribed (introduction of an ‘T’<sup>25</sup>) seemed to be of miniscule materiality. The Tribunal was not convinced by the check list of instances of discrepancies provided on Mr Zoysa’s behalf.

12.3 The Tribunal equally rejects the suggestion that the lack of video recording of the initial contact of Mr Zoysa with Mr Richardson in advance of the formal interviews, the absence of video of the first interview said (wrongly, as it turns out) to be so recorded, has anything sinister about it. The audio transcript speaks for itself. Sound did not need the reinforcement of sight.

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<sup>24</sup> See his witness statement, paras 16-26.

<sup>25</sup> T2 at 13.25.

(ii) The no lawyer point

12.4 It is accepted that Mr Zoysa had no legal representation during the interviews. The ICC relies on Mr Zoysa's waiver of legal assistance, which it asserts he could have had<sup>26</sup>. It is there clearly recorded that Mr Zoysa said he could not afford a lawyer<sup>27</sup>. If, as he subsequently claimed<sup>28</sup> - contrary to the interview transcript - that what he said or meant was that he could not obtain a lawyer at the start of the first interview, he certainly had time, if not necessarily money, to obtain one by the date of the second interview.

12.5 Mr Zoysa was being asked in these interviews only to tell the truth and, in the Tribunal's view, a lawyer was not necessary for that purpose. Moreover, these are disciplinary, not criminal, proceedings and, notably, there is no privilege against self-incrimination<sup>29</sup>. So,

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<sup>26</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (preliminary): **STEVE RICHARDSON:** *So, Nuwan, if you want to have a lawyer present, because we're going, we are going to speak to you, if you want to have a lawyer present or you want to have someone else present as a witness. NUWAN ZOYSA:* *No I'm fine. STEVE RICHARDSON:* *You're – I mean, we are recording you, both video and audio, so there is a record of exactly what is, what is said, and that's fine, but you're happy to continue, are you? NUWAN ZOYSA:* *Yeah. Yeah. STEVE RICHARDSON:* *So let me – just get my glasses. NUWAN ZOYSA:* *Because it's hard to get a lawyer now. STEVE RICHARDSON:* *Is it? NUWAN ZOYSA:* *Yeah, yeah, can't get lawyers, can't afford. STEVE RICHARDSON:* *No, can't afford it. NUWAN ZOYSA:* *Yeah. STEVE RICHARDSON:* *Okay, I understand.*

See also transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part one), at p.52: **STEVE RICHARDSON:** *[...] Now, the other thing that we, we need to discuss is that at your own expense and arrangement, you're fully entitled to have a legal representative present during the interview. We discussed this previously. NUWAN ZOYSA:* *Yeah STEVE RICHARDSON:* *However, this should not be allowed to unduly delay the interview. And, when we discussed it earlier on, you were trying to decide as to whether you want a lawyer present. Do you just want to tell us what your thoughts are on that? NUWAN ZOYSA:* *I thought I will definitely face one on one, because getting a lawyer gets more time and all, so I'll talk to you. STEVE RICHARDSON:* *So you're happy for this to go ahead without a lawyer present, okay. That's fine, thank you ....*

See also transcript of ACU interview with Nuwan Zoysa on 9 October 2018, p.93: **STEVE RICHARDSON:** *Thank you. Today's date is the 9th of October 2018 and the time is 13:52. We're in the board room at the Cinnamon Grand Hotel in Sri Lanka. Nuwan, you happy for this interview to go ahead in these circumstances? You're entitled to legal representation at your expense. You content for it to go ahead? NUWAN ZOYSA:* *Yeah.*

<sup>27</sup> Ditto

<sup>28</sup> T1 p.19, which is not wholly clear.

<sup>29</sup> Article 2/7.2 and 4.5 of the ICC Code states "In the light of the waiver contained in Article.2.7.2 it shall not be a valid basis for failing or refusing to cooperate or a valid defence to any subsequent charge for a participant to invoke any privilege against self-incrimination..." Also, see the rationale explained in Valcke para 261ff.

while a lawyer might in theory have protected Mr Zoysa against any perceived oppression (see (iv) below) or assisted him on legal points (which were amply covered in the Answer and Supplementary Submissions) or led him to a better understanding of the nature of the investigations and the consequence of the admissions he may or may not have planned to make during the interviews, these points of theory cannot avail him in fact.

12.6 Furthermore, the Tribunal was satisfied that Mr Zoysa understood the implications of the investigations and seriousness of the process. He was informed early on in the interview that he was considered as a suspect, and his answer clearly implied that he understood the meaning of this. Mr Zoysa had been made aware that, at this point, or subsequently, he could stop the interview and seek legal support. Furthermore, the Tribunal found Mr Zoysa's emotional reaction during the interviews to his admission of some of the core elements of the offences to be compelling evidence that he understood the seriousness of the matter, and the potential consequences of the process.

(iii) The No Interpreter Point

12.7 It is common ground that that Mr Zoysa's primary language is Sinhalese, not English, and that no interpreter was provided. It is also common ground that Mr Zoysa made no request for an interpreter.

12.8 The Tribunal considers it relevant to make the following observations:

- (i) Mr Zoysa commented that he was not fluent in English especially in a formal setting, but he appears to have used English in other contexts<sup>30</sup>.
- (ii) Mr Zoysa does state that he speaks to his wife in Sinhalese, but it does not follow that he cannot speak/understand English.
- (iii) Mr Zoysa does not appear to have raised any issues during interview as to his understanding of what he was being asked (or indeed of the cautions he was

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<sup>30</sup> See, for example, 'Prudent Media Simply Sport with Nuwan Zoysa 10 Nov 12', parts one and two, available at [https://www.youtube.com/watch?v=\\_upBpJmWSAY](https://www.youtube.com/watch?v=_upBpJmWSAY) and <https://www.youtube.com/watch?v=MOxHEvgIK78>.

given as to the importance of what was at stake). Mr Richardson expressly said to him at the start of the interview on October 2, 2018 *"If there's anything you don't understand, just let me know and I'll rephrase it"*<sup>31</sup>, but Mr Zoysa made no use of this open offer.

- (iv) The interviews were conducted in a probing but sympathetic manner which allowed Mr Zoysa adequate time to compose his thoughts.

12.9 Having revisited the transcripts and video recordings the Tribunal is persuaded, based on the answers given by Mr Zoysa and his general reaction to questions posed, that Mr Zoysa was aware of the issues and capable of dealing with them adequately in an interview conducted in English. The Tribunal notes that Mr Zoysa was, at times, hesitant, and that some of his answers lacked coherence, but in the Tribunal's view, (a) this stemmed from a lack of understanding but rather because of the difficulties in which he found himself, and (b) Mr Zoysa's answers were sufficiently articulate to demonstrate that he understood the questions and was replying to the specific lines of questions raised. Again, in this context, the Tribunal found Mr Zoysa's emotional reaction to his admission of some of the core elements of the offences, to be compelling evidence that he sufficiently understood the questions posed and felt sufficiently able to make his responses.

- (iv) The oppression point

12.10 The Tribunal can detect no evidence of oppression in the video recording, which is the best evidence available to it on the issue of oppression. At both interviews, Mr Zoysa was clearly advised as to the purpose of the interviews.<sup>32</sup> He was given an opportunity

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<sup>31</sup> Interview transcript, p.52.

<sup>32</sup> The Tribunal notes that (i) at the very outset, the ACU representatives explained to Mr Zoysa, in clear terms, that he was a suspect in respect of breaches of the ICC Code they were investigating, (ii) the ACU representatives gave Mr Zoysa a full warning at the commencement of both interviews, including (specifically) a warning that *"The answers and information you provide may be used as evidence to support a charge of breach of the Code by a third party, or they could be used to support a charge against you if they reveal that you had breached the Code, either by acting corruptly yourself or by failing to report corrupt advances or corrupt actions by others. [...] The interview's going to be fully recorded and may be produced"*. The fulness of the cautions can be seen with reference to the interview transcripts.

to compose himself<sup>33</sup>. He was offered help if he was exposed to threats etc as a result of what he had told the ICC<sup>34</sup>. He was offered the opportunity to break the interview when he became emotional. He was clearly informed that he was a suspect.

12.11 The Tribunal recognises that the obligation on a Participant, on pain of penalty, to cooperate with the investigation, as well as the potential implications of the

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<sup>33</sup> **NUWAN ZOYSA:** *He said do you know any players to do something for English tour. I said no, because there's so many things going in Sri Lanka cricket. Can you give me one second.*

**STEVE RICHARDSON:** *That's all right. Do you want some water? Yeah? Are you all right? I know it's difficult. Just take a minute to compose yourself, that's fine. I do understand how hard it is. I understand. You've crossed a threshold here, because you started telling the truth, which is a good thing. What we need to know is exactly – is everything.*

**NUWAN ZOYSA:** *I'm telling you.*

**STEVE RICHARDSON:** *Okay, that's what we need to know. We need to know everything. Do you want to have a break or are you okay?*

**NUWAN ZOYSA:** *One minute, yeah.*

**STEVE RICHARDSON:** *Okay. So the time is 12:15. I'm going to turn the recordings off. We're going to have a five minute break for you, okay?*

**NUWAN ZOYSA:** *Okay*

**STEVE RICHARDSON:** *Just to compose yourself.*

<sup>34</sup> **NUWAN ZOYSA:** *As far as I know, I said I have one question, since you said about [Mr V] that you mentioned my name to him and ask with the [INDISCERNIBLE 00:15:09]. So, I just want to know -- see I have family, young family. If something happened, a lot of mafia going in Sri Lanka. Many people I know, fucking might come and kill many people. What I should do for that if something -*

**STEVE RICHARDSON:** *For your safety?*

**NUWAN ZOYSA:** *Yeah. So, give me answer for that because we have to move on. Whatever happen, whatever charge I get, I have to move on with my family because end of the day, that's the circle I have. So, finding another line is up to me now, but I have to look after them.*

**STEVE RICHARDSON:** *I understand. But at the end of the day we're not in that position at the moment. When we get people in and speak to them, quite often people mention other people's names. You know it happens quite frequently. I think Sri Lanka Cricket is in such turmoil, so many problems and issues at the moment. I don't think anybody's going to be looking to do anything.*

**NUWAN ZOYSA:** *It's very hard too. Because I know Sri Lanka better than you --*

**STEVE RICHARDSON:** *You know it much better than me. I completely accept that.*

**NUWAN ZOYSA:** *So for even the little money.*

**STEVE RICHARDSON:** *If you get....*

**NUWAN ZOYSA:** *It can happen in Sri Lanka. But in the --*

**STEVE RICHARDSON:** *If you get any, any issues, you let us know straight away. We have some very high contacts in the government scene, trustworthy contacts --*

investigation for the future and career of a Participant, as well as that of his or her family, naturally creates an uncomfortable environment for the Participant. It is impossible for an interviewer to avoid, or completely remove, this sense of discomfort. It is therefore imperative for the interviewer to be conscious of these facts and not to exploit them. Having seen and heard the approach of Mr Richardson during the interviews, the Tribunal is content that he was sensitive to these facts, and that there was no oppression.

12.12 The Tribunal was not convinced by Mr Zoysa's summary of the alleged oppression set out in his second affidavit, which reads like a lawyer's summary.

(v) Generally

12.13 The Tribunal accepts that there is no unqualified admission in any of the interviews of an act which would qualify as a breach of Article 2.1.1.

12.14 It seems, however, that Mr Zoysa himself accepts that, fairly viewed, those statements do collectively amount to admissions; hence his need to say that there was misunderstanding of his purported admissions<sup>35</sup>.

12.15 These 'misunderstandings' seem to have three distinct elements (i) he misspoke<sup>36</sup>, (ii) he was unable, because of the manner of the interviews, to say what he meant to say, and (iii) when he said what he meant to say, his statements were misinterpreted<sup>37</sup>. While these diverse elements are not necessarily incompatible, the fact of their variety does not encourage acceptance of his basic contention.

12.16 The Tribunal's clear impression is that Mr Zoysa, at the conclusion of the interviews, and particularly during the last 6 minutes to which Mr Zoysa's Counsel drew specific attention and in which he was driven to use expletives, was distressed and emotional. In its view, these factors resulted from his recognition that, by succumbing to the temptations offered by [Mr W] and [Mr V], he had, for no gain, put his future and his

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<sup>35</sup> See his second affidavit, paras 26 ff.

<sup>36</sup> Ditto, para 29.

<sup>37</sup> Ditto, para 30.

family at risk<sup>38</sup>. The Tribunal is convinced that Mr Zoysa well understood the nature of the charges preferred against him.

12.17 Mr Zoysa has sought to resile from the admissions that he made in the interviews and now 'vehemently' denies the charges<sup>39</sup>. However, "*the currency of [a] denial is devalued by the fact that it is the common coin of the guilty as well as the innocent.*"<sup>40</sup>

12.18 As to the breach of Article 2.1.4, far from resiling, Mr Zoysa actually repeated, in his witness statement,<sup>41</sup> that he failed to report [Mr W]'s approach.

### 13. CONCLUSION

13.1 Based on the analysis at paragraph 2 above, the Tribunal is comfortably satisfied that it has jurisdiction over the charges brought by the ICC under the ICC Code.

13.2 Based on the above evidence the Tribunal is comfortably satisfied that Mr Zoysa has breached Article 2.1.1, in that he agreed with [Mr W] to be party to an effort to fix or contrive or otherwise influence improperly the result, progress, conduct or other aspect of one or more International Matches. More particularly, he agreed to make a corrupt approach on behalf of [Mr W] to Sri Lankan international cricketer, [Player A], to underperform in one or more International Matches (against Zimbabwe and/or Bangladesh).

13.3 Based on the above evidence the ICC Anti-Corruption Tribunal is comfortably satisfied that Mr Zoysa has breached Article 2.1.4, in that he directly solicited, enticed or encouraged [Player A] to fix or be a party to an agreement or effort to fix the result, progress or conduct or other aspect(s) of one or more International Matches (against Zimbabwe and/or Bangladesh) – specifically, by deliberately underperforming therein, in breach of ICC Code Article 2.1.1.

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<sup>38</sup> See fn 39.

<sup>39</sup> Answer, para 9.

<sup>40</sup> Meca-Medina v FINA CAS 99/A/234 para 10.17.

<sup>41</sup> Zoysa WS para 27.



13.4 Based on the above evidence in particular his admission<sup>42</sup>, the Tribunal is comfortably satisfied that Mr Zoysa has breached Article 2.4.4. by failing to report any of the approaches he says [Mr W] and [Mr V] made to him.

#### 14. SANCTION

14.1 As the Tribunal has found all the charges to be proven, the Tribunal now gives consideration to the request by the ICC and Mr Zoysa to allow them to address separately the question of sanction<sup>43</sup>. The Tribunal invites them to do so within 21 days.

**Michael J Beloff QC Chairman**

**The Honorable Justice Winston Anderson**

**Simon Copleston**

**9 January 2021**

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<sup>42</sup> In the response dated 13 November 2018 to the Notice of Charge, Mr Zoysa's lawyers said: "*Our client **admits only** the fact that, due to the reason of his close affiliation to his [redacted] [Mr V] and his genuine desire to try and assist him in what was termed "financial difficulty", he did not **disclose to the ICC** of the introduction and subsequent invitations by [Mr W]*".

<sup>43</sup> The the ICC Code provides (at ICC Code Article 6.2) that for a breach of Article 2.1 the range of permissible period of Ineligibility is a minimum of five (5) years and a maximum of a lifetime. For the ICC Code Article 2.4 offence, the range or permissible period of Ineligibility is a minimum of six (6) months and a maximum of five (5) years. In respect of both ICC Code Article 2.1 and ICC Code Article 2.4, the Anti-Corruption Tribunal may also impose a fine in such an amount as it deems appropriate.

APPENDIX

**Corrupt approach to Mr Zoysa by a known match-fixer, [Mr W], through [redacted] [Mr V]**

- In his interviews with the ACU, Mr Zoysa explained that he had received a corrupt approach from a known match-fixer, [Mr W], via [redacted] [Mr V]. In or around April 2017 he had been introduced to [Mr W] by [Mr V], [redacted]. [Mr V] described [Mr W] to him as a person for whom they could “get some players” and “earn money”. [Mr V] explained that it would be easy for Mr Zoysa to get players for this purpose, because the players were friendly with him <sup>44</sup>.
- He understood [Mr V] to mean the proposal was that he would recruit players for purposes of fixing/underperforming<sup>45</sup>.

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<sup>44</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (STEVE RICHARDSON: *As you know, with us turning up at your work today, there are some things we know. Please keep your honesty going, okay. Who introduced you to [Mr W]? NUWAN ZOYSA: I tell you. Please give me one second to find one thing there. [redacted] [Mr V]. STEVE RICHARDSON: [Mr V]? NUWAN ZOYSA: Yeah. STEVE RICHARDSON: And what does [Mr V] do? NUWAN ZOYSA: He works for [redacted], but I'm telling you all these things, because you said you'll keep that confidence, and I respect your word STEVE RICHARDSON: Well, absolutely, but obviously we have to protect cricket as well, you understand that. So what's [Mr V]'s role? NUWAN ZOYSA: [redacted]. STEVE RICHARDSON: So what does he do now? NUWAN ZOYSA: [redacted] STEVE RICHARDSON: [redacted]. Okay. So how did he introduce you to [Mr W]? What happened? NUWAN ZOYSA: Yeah, he said he got, you know, some person that we can get some players, and we can earn money, and you have to do is get some players, because I'm into coaching. What he said was it's easy to get players, because they're quite friendly with me players. So he said why not give a try, then he told there's a guy he'll call you, and you just contact with him. That's how I know this [Mr W])*

<sup>45</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (STEVE RICHARDSON: *So when did this conversation with [Mr V] take place? NUWAN ZOYSA: Two years ago. STEVE RICHARDSON: Some time ago. NUWAN ZOYSA: Yeah. STEVE RICHARDSON: Okay. And where did it take place? NUWAN ZOYSA: He called. STEVE RICHARDSON: He called you. NUWAN ZOYSA: Yeah. STEVE RICHARDSON: Why, why – so he's called you to say what? NUWAN ZOYSA: He just said what [Mr W] said, many players are doing, they're having this land, that land, that vehicle, you can't get only playing IPL and all sort of things actually. As I said, I have pretty bad mouth. I used to*

- [Mr V] put Mr Zoysa and [Mr W] in touch with one another by giving [Mr W] Mr Zoysa's telephone number<sup>46</sup>.
- Also about April 2017, [Mr W] first contacted Mr Zoysa (approximately 18 months before the ACU interview)<sup>47</sup>.

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*blackguard and scold them like even you call, then what the hell they are doing and all these things. That's what I'm saying you people, are just sitting and waiting. I'm very honest, right? STEVE RICHARDSON: Yeah NUWAN ZOYSA: Why not just introduce one or two, then through that we can get some money, you know. That's what he mentioned. ALEX MARSHALL: Just to be clear, take some money for what? Just so you spell it out so we understand. NUWAN ZOYSA: Yeah, for fixing, no? Most probably. ALEX MARSHALL: Match fixing. NUWAN ZOYSA: Yeah. I don't know that's what he mentioned. You can get players, probably then you can earn money, and he can get some money as well. ALEX MARSHALL: Okay, but just to be really clear, you could get money like a player's agent, finding players for a cricket team, but that's not what you're saying. NUWAN ZOYSA: No, no, no. ALEX MARSHALL: You're saying for – NUWAN ZOYSA: To me only that's what he said. STEVE RICHARDSON: Yeah, and for what purpose getting the players, just so we're clear? NUWAN ZOYSA: Yeah, either way, no, the fixing or underperform most probably. ALEX MARSHALL: Fixing or underperform. NUWAN ZOYSA: Yeah, I'll be very honest)*

<sup>46</sup> See transcript of ACU interview with Nuwan Zoysa on 9 October 2018 (*STEVE RICHARDSON: Yeah. How did he introduce you to [Mr W]? NUWAN ZOYSA: He gave his number then I think either he give his number or I gave my number to [Mr V]. Somehow either way contact. So, afterwards we had the conversation. But he said also to get some players, but I never happy to give him straight away. It went to like that).*

<sup>47</sup> See transcript of ACU interview with Nuwan Zoysa on 9 October 2018 (*STEVE RICHARDSON: So, just explain to me again what [Mr V] -- how [Mr V] fits into this, this picture. NUWAN ZOYSA: I think one and a half years ago, or two years ago, he called and said there's chance, right, to do – I'm the only person not doing and why not give me this and he contact this [Mr W] to do this fix, alleged things. I mean, those -- STEVE RICHARDSON: Fixing. NUWAN ZOYSA: Fixing things. Yeah, yeah, yeah. STEVE RICHARDSON: Right. So, that was about one and a half years ago. When he first made you the offer? NUWAN ZOYSA: Yeah. Correct. I mean him, who he met this [Mr W]. Yeah. He never asked me to do but he contact [Mr W]. STEVE RICHARDSON: He introduced you to [Mr W]. NUWAN ZOYSA: [Mr W], yeah. STEVE RICHARDSON: Right. He introduced you to [Mr W]. NUWAN ZOYSA: Yeah. STEVE RICHARDSON: And what did he say to you when he -- NUWAN ZOYSA: He said that many people are doing, so why you're not doing? STEVE RICHARDSON: Fixing? NUWAN ZOYSA: Yeah, yeah. And you should get some money, and there's a person. You'll contact him and just do the needful. STEVE*

- [Mr W] said he could get Mr Zoysa a job coaching one of the teams in the Afghanistan Premier League, and then a team in the Bangladesh Premier League as well. In exchange for [Mr W] getting him coaching jobs, [Mr W] asked Mr Zoysa to “get” players<sup>48</sup>.
- Mr Zoysa knew that when [Mr W] said he wanted Mr Zoysa to “get” players, he meant to get them to underperform deliberately, for example for bowlers to give away a pre-determined number of runs<sup>49</sup>.

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**RICHARDSON:** Okay. And that was about 18 months ago, he -- **NUWAN ZOYSA:** It looks like, yeah, yeah.

**STEVE RICHARDSON:** He called you? **NUWAN ZOYSA:** Yeah, yeah he called).

<sup>48</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part one) (**NUWAN ZOYSA:** Okay, let me be very clear. I promise you today that I tell the truth. Yeah, there's a guy asked me to come and coach one of the teams. **STEVE RICHARDSON:** Yeah **NUWAN ZOYSA:** I said I can't because the cricket board never give NOCs for small tournaments like that. I'll be the honest yes. **STEVE RICHARDSON:** Thank you. And who is the person who asked you to go and coach one of the teams? **NUWAN ZOYSA:** He's a guy called [Mr W]. **STEVE RICHARDSON:** [Mr W] **NUWAN ZOYSA:** Yeah. He's the one called and told me that he can get me to coach Afghanistan team, one of the Afghanistan league team. **STEVE RICHARDSON:** Mm-hmm, in the Afghan Premier League ... **STEVE RICHARDSON:** Mm-hmm. Which Afghan team? **NUWAN ZOYSA:** He never mentioned a team. He said he can get me to one of Afghanistan teams, in the league. **STEVE RICHARDSON:** Okay, so he said that he could get you in, okay. Who... **NUWAN ZOYSA:** I'll be very honest with you. **STEVE RICHARDSON:** Yes, please. **NUWAN ZOYSA:** And he said if I'm happy that he'll get me Bangladesh Premier League as well, yeah, so I said I can't be sure doing those, because I am very much in the line of national team, going in national team, because I work hard for my captain, so I said I'm not sure doing that for Afghanistan team, because BPL made our coaches have been there before, so I knew there is a chance, but certainly I said for Afghanistan team. **STEVE RICHARDSON:** Okay. Who, who is [Mr W]? **NUWAN ZOYSA:** I think he is into fixing. **STEVE RICHARDSON:** Okay **NUWAN ZOYSA:** Yeah. **STEVE RICHARDSON:** Okay, why do you think that? **NUWAN ZOYSA:** Because he said that he'll get me this job and will ask to get any players. I will be honest, I tell you. **STEVE RICHARDSON:** I'm grateful for your honesty **NUWAN ZOYSA:** Yeah yeah. With my career I don't know what will happen, but I'll be honest here).

<sup>49</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part one) (**STEVE RICHARDSON:** What was he asking you to do? **NUWAN ZOYSA:** Can I get some players. **STEVE RICHARDSON:** In order to do what? **NUWAN ZOYSA:** Obviously to fix, most probably what they want. **STEVE RICHARDSON:** Did he tell you that that's what he wanted the players to do? **NUWAN ZOYSA:** He said if you can get players that they can earn money, and the player can earn money as well. **STEVE**

- He has met [Mr W] once in person, at a race course in Colombo<sup>50</sup> (and was able to identify a photograph of [Mr W] when one was presented to him by the ACU)<sup>51</sup>.

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**RICHARDSON:** *By doing what?* **NUWAN ZOYSA:** *Probably under perform.* **STEVE RICHARDSON:** *Under perform. So did he describe what he would want them to do?* **NUWAN ZOYSA:** *Once he said if you get bowlers...* **STEVE RICHARDSON:** *Yes* **NUWAN ZOYSA:** *To get 12 to 15 runs.* **STEVE RICHARDSON:** *To give away 12 to 15 runs?* **NUWAN ZOYSA:** *Yeah).*

<sup>50</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part one) (**STEVE RICHARDSON:** *Okay. So you got to know him last year. Whereabouts? Where did you meet him first?* **NUWAN ZOYSA:** *I met him, I met him – could you give me two three seconds to–* **STEVE RICHARDSON:** *Please, please.* **NUWAN ZOYSA:** *Yeah yeah* **STEVE RICHARDSON:** *Take your time.* **NUWAN ZOYSA:** *Somewhere I think a hotel. I know, they came to meet me the race course, Colombo race course. Yeah, Colombo race course).*

<sup>51</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** *[...] So, [Mr W], did he have a first name at all that you used?* **NUWAN ZOYSA:** *I knew him as [Mr W].* **STEVE RICHARDSON:** *Just as [Mr W].* **NUWAN ZOYSA:** *Yeah.* **STEVE RICHARDSON:** *No other first names?* **NUWAN ZOYSA:** *I can't remember his first name, [Mr W].* **STEVE RICHARDSON:** *What did he look like?* **NUWAN ZOYSA:** *[redacted].* **STEVE RICHARDSON:** *How old?* **NUWAN ZOYSA:** *[redacted].* **STEVE RICHARDSON:** *[redacted]?* **NUWAN ZOYSA:** *[redacted].* **STEVE RICHARDSON:** *[redacted].* **NUWAN ZOYSA:** *[redacted].* **STEVE RICHARDSON:** *[redacted].* *And – okay. And how tall is he?* **NUWAN ZOYSA:** *[redacted].* **STEVE RICHARDSON:** *Okay. Did you ever see him at a hotel?* **NUWAN ZOYSA:** *No.* **STEVE RICHARDSON:** *Does he come to Sri Lanka very often?* **NUWAN ZOYSA:** *I only met him once.* **STEVE RICHARDSON:** *You only met him once. So let's go back to [Mr V]. [Mr V], have you got a telephone number for [Mr V] in your phone?* **NUWAN ZOYSA:** *Yeah, sure.* **STEVE RICHARDSON:** *Sorry.* **STEPHANIE:** *No, no, that's all right. Keep it on.* **STEVE RICHARDSON:** *Yeah, yeah, yeah. I'm going to show you a picture, okay? Tell me if you know who that person is.* **NUWAN ZOYSA:** *That's right. That's [Mr W].* **STEVE RICHARDSON:** *That's him, that's [Mr W].* **NUWAN ZOYSA:** *[Mr W], yeah).*

- While he resisted [Mr W]'s approaches for a long period of time<sup>52</sup>, he finally gave into the temptation of more money (feeling that he was underpaid by SLC)<sup>53</sup>.

### Admitted approach to [Player A]

[Player A], a Sri Lankan international player, says that Mr Zoysa made the following corrupt approach to him<sup>54</sup>:

- Mr Zoysa approached him in late 2017, at which point he was playing for [redacted].
- Mr Zoysa approached him while he was taking part in a practice net session at the [redacted].
- Mr Zoysa told him that a number of international players were involved in fixing while playing for Sri Lanka - specifically naming two players ([Player D] and [Player E]) - and said he could introduce him to someone if he wanted to get involved.

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<sup>52</sup> See transcript of ACU interview with Nuwan Zoysa on 9 October 2018 (**STEVE RICHARDSON:** *Or gave [Mr W] your number, how long was it before you actually tried to get a player? NUWAN ZOYSA: I drag it for so long. Yeah -- STEVE RICHARDSON: How long did you drag it? NUWAN ZOYSA: Oh, I can't remember, I drag it, drag it. But every time when he called, he ask why, why, why. Why you are taking so much time? ...*).

<sup>53</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**NUWAN ZOYSA:** *So many things in the last few months, but I know I was tempted, to be honest, that's why I spoke to [Player B] about this recently, this Afghan thing. STEVE RICHARDSON: So you were tempted to what? NUWAN ZOYSA: As I said, we get very less money thought how much we coach, because we are the one doing so much to Sri Lankan cricket, but my salary is 2.5 lakhs, to be honest. STEVE RICHARDSON: For the year. NUWAN ZOYSA: Yeah, not year, monthly. STEVE RICHARDSON: A month, sorry, right, okay. NUWAN ZOYSA: So we have enough expenses, but they know I'm having family, got two girls. That's why I went and spoke to [Player B] about this Afghan thing. STEVE RICHARDSON: To try to make some money. NUWAN ZOYSA: Thought of. I was really scared when going. I never went and met someone in the house, you know, it's my first time. I made a mistake).*

<sup>54</sup> [Player A] WS.

- He immediately said no to Mr Zoysa's approach.

Mr Zoysa admitted in interview to the ACU that he had indeed made this approach to [Player A]. He explained:

- [Mr W] asked him about [Player A] many times, because [Player A] is a prospect in Sri Lankan cricket<sup>55</sup>.
- [Mr W] told him to “get” [Player A] for the upcoming international series that Sri Lanka were playing against either Zimbabwe or Bangladesh<sup>56</sup>.
- Mr Zoysa approached [Player A] [redacted]<sup>57</sup>.

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<sup>55</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON**: *Okay. So I want to come back. Shortly I want to come back to what other series [Mr W] has talked about. Before I do that, we're going to come to the most important part of this, okay? Who have you approached to ask for fixing? I need to know every player that you've approached to ask for fixing.* **NUWAN ZOYSA**: *Yeah* **STEVE RICHARDSON**: *Really important.* **NUWAN ZOYSA**: *Yeah. Yeah. He asked about [Player A] many times, and he said with him that you can do many things, because he's the prospect in our cricket, that you can do many things).*

<sup>56</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**NUWAN ZOYSA**: *Actually he told me to get him for I think Zimbabwe or Bangladesh, if I'm correct. It's just a conversation with us.* **STEVE RICHARDSON**: *Okay, so Zimbabwe and Bangladesh were in the summer of last year.* **NUWAN ZOYSA**: *I think Bangladesh, if I'm correct, Bangladesh. That's the game he scored some runs as well, [Player A].* **STEVE RICHARDSON**: *Okay. So it was in an international series.* **NUWAN ZOYSA**: *Yeah*). Sri Lanka played in a Tri-Nation Series alongside Bangladesh and Zimbabwe between 15 and 27 January 2018, and Sri Lanka then went on to play further matches against Bangladesh in January, February and March 2018.

<sup>57</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON**: *I'll come to that. I'll come to it. Right. So where were you when you spoke to [Player A]?* **NUWAN ZOYSA**: *[redacted].* **STEVE RICHARDSON**: *[redacted]?* **NUWAN ZOYSA**: *[redacted].* *One day I asked – [...]* **STEVE RICHARDSON**: *Okay, and this was at [redacted].* **NUWAN ZOYSA**: *Yeah.* **STEVE RICHARDSON**: *[redacted].* **NUWAN ZOYSA**: *[redacted].*

- He told [Player A] “*what [Mr W] told me*”, i.e., that he could make good money by underperforming, if he gave away runs (while bowling) or gave away his wicket (while batting)<sup>58</sup>.
- [Player A] said no to his approach straight away<sup>59</sup>.

### Admitted approach to [Player B]

[Player B], a Sri Lankan international player, provided the following information concerning a corrupt approach that Mr Zoysa made to him (which [Player B] originally reported to his agent, before the report was received by the ACU on 25 September 2018):<sup>60</sup>

- At about 9.30am on (or around) 24 September 2018, [Player B] was at his house when Mr Zoysa (with whom he is professionally close) called him on the telephone. Mr Zoysa stated that he would like to speak to him, and so he invited Mr Zoysa to his house.

<sup>58</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**ALEX MARSHALL:** *So when you then spoke – sorry, then when you spoke to [Player A], how did you describe it, what words did you use?* **NUWAN ZOYSA:** *Yeah, I said, if you do that, you'll get good money.* **ALEX MARSHALL:** *If you do what?* **NUWAN ZOYSA:** *Yeah, underperform.* **ALEX MARSHALL:** *If you underperform?* **NUWAN ZOYSA:** *Yeah* **ALEX MARSHALL:** *You'll get good money.* **NUWAN ZOYSA:** *So what [Mr W] told me to do I straight away told him to get, give 15 to 12 runs, or either get out, then you get good money, so I had the same message to [Player A]* **ALEX MARSHALL:** *So playing to a particular way, to score a certain number of runs, or concede runs, so change what he would normally do and get paid money for it, because it was coming from [Mr W], who told you that you could make money from -* **NUWAN ZOYSA:** *What he said I just translate to him same way, yes.* **ALEX MARSHALL:** *And what would we describe that as? What's that usually called?* **NUWAN ZOYSA:** *I don't know, it's fixing.* **STEVE RICHARDSON:** *Spot fixing, okay).*

<sup>59</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** *So you told [Player A]. Did you tell him about [Mr W], that you had someone?* **NUWAN ZOYSA:** *No, I never mentioned about his name. I said, would you like to do it. He straight away said no. That kid said no).*

<sup>60</sup> [Player B] WS.



- Mr Zoysa arrived at about 10am and asked [Player B] to get into his car. When he was in Mr Zoysa's car, Mr Zoysa asked him whether or not he would be participating in the Afghanistan Premier League. He responded that he was not. Mr Zoysa then said he knew someone who would be able to get him into the Afghanistan Premier League.
- However, Mr Zoysa made it clear that in order to get him into a team, he would need to bowl in a manner as instructed by this person, e.g., by deliberately giving away more than 10 runs in an over.
- Mr Zoysa said he had never been involved in fixing before, but that a lot of other people would be making a lot of money from it.
- [Player B], rejected the approach, sending Mr Zoysa a WhatsApp message to tell him that he was not interested.

Again, Mr Zoysa has admitted making this corrupt approach, saying:

- [Mr W] asked him if he could recruit [Player B] to fix matches in the Afghanistan Premier League. That is why he approached [Player B]<sup>61</sup>.

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<sup>61</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** Has [Mr W] asked you to approach any players in relation to the Afghanistan Premier League? **NUWAN ZOYSA:** He said that I can get players. **STEVE RICHARDSON:** Who did he ask you? **NUWAN ZOYSA:** He never asked about [Player A] He asked about [Player C]. **STEVE RICHARDSON:** [Player C], yeah. **NUWAN ZOYSA:** Oh no, another guy. [Player B]. **STEVE RICHARDSON:** Right. **NUWAN ZOYSA:** Yeah, whether we can get him, **STEVE RICHARDSON:** Right **NUWAN ZOYSA:** So I asked him also. He said no).

- The approach took place 'probably week and a half' prior to the ACU interview, so on or around 24 September 2018 (when [Player B] said it took place)<sup>62</sup>.
- He called [Player B] before attending at his house in his car<sup>63</sup>.
- He did not go into [Player B]'s house. Instead he made the approach in his (Mr Zoysa's) car<sup>64</sup>.

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<sup>62</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** *Okay. When did this conversation take place?* **NUWAN ZOYSA:** *Probably week and a half*).

<sup>63</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** *Okay. Where did this conversation take place?* **NUWAN ZOYSA:** *While driving, and I went – I bought some stuff and I went to see him, [Player B].* **STEVE RICHARDSON:** *Where did you go and see him?* **NUWAN ZOYSA:** *His home.* **STEVE RICHARDSON:** *His home?* **NUWAN ZOYSA:** *Yeah* **STEVE RICHARDSON:** *And you said it was while driving?* **NUWAN ZOYSA:** *Yeah, because I have a speaker phone my car. I will talk to him and said I come and see him, so he said come, and I go there and talk to him.*)

<sup>64</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two), at p.77 (**STEVE RICHARDSON:** *So did you go into his home?* **NUWAN ZOYSA:** *Yeah, I went. I didn't go inside. He came to my jeep.* **STEVE RICHARDSON:** *He came to your car. The car we've driven today.* **NUWAN ZOYSA:** *Correct. Yes*).

- He told [Player B] there was an opportunity to play in the Afghanistan Premier League, but that if he accepted that opportunity, then when playing in that event he would have to do what [Mr W] told him<sup>65</sup>.
- [Player B] sent him a text message to say that he could not do it<sup>6667</sup>

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<sup>65</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** *Okay, let's go through the same process with [Player B]. What did you say to [Player B]?* **NUWAN ZOYSA:** *[Player B] said even he's planning to go to Dubai to play some private matches, and in right now the mercantile cricket is going, so he said he wants to get away from mercantile and go and play this Dubai league or whatever. At the moment he said there is a chance for him to go and play, so then I asked again it's opportunity for you to go and play Afghanistan, this league, and he straightaway asked if we are getting – what's the contract like, there is some slabs no, like how they build, so [Mr W] never told me which category, so I said I don't know, and even he didn't ask what category or anything, so next day I called him. He said he can't).*

<sup>66</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**STEVE RICHARDSON:** *I just want to be very clear on [Player B], did you say this guy can get you to go, but you will have to do some things for him?* **NUWAN ZOYSA:** *Yes, right, correct.* **STEVE RICHARDSON:** *So you did say that to him. And those things were to underperform.* **NUWAN ZOYSA:** *Never mentioned about anything like that to [Player B], I asked would he like to go, but there's a guy, he'll talk to you how to play, but never talk about what situation or nothing like that.* **STEVE RICHARDSON:** *Was it clear to [Player B] that you would introduce him to a guy who he would have to* **NUWAN ZOYSA:** *Come again, please, sorry? Come again* **STEVE RICHARDSON:** *Sorry, did [Player B] think that he was going there to play his best, or did [Player B] think he would have to do some* **NUWAN ZOYSA:** *Yeah, I told him that if you go that you have to play what that guy says* **STEVE RICHARDSON:** *What [Mr W] says?* **NUWAN ZOYSA:** *[Mr W]. Yeah, yeah. But he straightaway – next day he said he can't do that).*

<sup>67</sup> See transcript of ACU interview with Nuwan Zoysa on 2 October 2018 (part two) (**NUWAN ZOYSA:** *[Player B]. He said he's having a drink that time, so he said I'll tell you later, so I said, okay, you tell me, so next day evening, I think I asked him, call, he said he can't. Actually he texted and said he can't. He said I can't do that. I am his brother again).*