

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

INTERNATIONAL CRICKET COUNCIL ('ICC')

v.

DINESH CHANDIMAL, ASANKA GURUSINHA and CHANDIKA
HATHURUSINGHE (collectively, the 'Defendants')

Award

1. INTRODUCTION

1.1 Each of the Defendants has been charged with conduct contrary to the spirit of the sport, in breach of Article 2.3.1 of the ICC Code of Conduct (“the Code”) which, according to its comment, 'is intended to cover all types of conduct of a very serious nature that is contrary to the spirit of the game ...'¹ (emphasis in original). A breach of Article 2.3.1 is Level 3 offence.

1.2 Each of the Defendants has admitted that charge. The issue which I, as Judicial Commissioner, have to resolve is what sanctions should be imposed for their offences.

2. FACTS - THE FIRST INCIDENT¹

2.1 On 15 June 2018, on the second day of the recent Test match between the West Indies and Sri Lanka in St Lucia (the **Match**), during West Indies' first innings, Mr Chandimal,

¹ The uncontested facts of First and the Second Incidents are taken from those parts of the witness statement (“WS”) of ICC Match Referee Mr Javagal Srinath (“The Match Referee”) which were not

the Captain of the Sri Lankan team, received the ball from his wicket-keeper at the end of an over, reached into his pocket and took out something (he says it was either a Strepsil or an almond), put it into his mouth, sucked or chewed it for a few seconds before spitting saliva containing the residue of that Strepsil or almond onto his finger, and then rubbed that saliva and residue onto the match ball to polish it (“the First Incident”).

2.2 The Match umpires (“the Umpires”) only learned of the First Incident the following morning, when alerted by the Match broadcaster. After viewing the footage of the First Incident (which had not been broadcast to that point), they concluded that Mr Chandimal had changed the condition of the match ball in a manner contrary to clause 41.3 of the ICC Standard Test Match, ODI and T20I Playing Conditions (the '**Playing Conditions**'). They therefore determined to take the steps prescribed in such circumstances by that provision Clause 41.3.5² (i.e., to change the match ball by inviting the West Indies batsmen at the start of the day's play to select a replacement ball and also to award 5 penalty runs to the West Indies (“the Prescribed Steps”) and also reported the matter to the Match Referee to consider whether further action should be taken against Mr Chandimal for breach of Article 2.2.9 of the Code).

challenged and (so far as concerns the bringing of the charges) of the WS of ICC CEO Mr David Richardson. Various parts of the Match Referee’s description of the second incident are, however disputed by the Defendants and I have accordingly had to make findings as to what version I accept. I make those findings in the Section 7 entitled ANALYSIS below.

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

41.3.5.1 Change the ball forthwith.

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

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

41.3.5.2 Additionally, the bowler’s end umpire shall:

- award 5 Penalty runs to the opposing side.

- if appropriate, inform the batsmen at the wicket and the captain of the fielding side that the ball has been changed and the reason for their action.

- inform the captain of the batting side as soon as practicable of what has occurred.

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

- 2.3 At the end of the day's play, the Match Referee charged Mr Chandimal with a breach of Article 2.2.9 of the Code and clause 41.3.5 of the Playing Conditions.
- 2.4 After a hearing on 18 June 2018, the Match Referee found that Mr Chandimal had committed the offence charged, and imposed a sanction of two Suspension Points and a fine of 100% of his match fee.
- 2.5 After a hearing on 22 June 2018, I rejected Mr Chandimal's appeal against that decision, holding that Mr Chandimal had unfairly changed the condition of the match ball in breach of Article 2.2.9 of the Code and clause 41.3.5 of the Playing Conditions, as charged³, and that the sanction imposed by the Match Referee was proportionate.

3. FACTS; THE SECOND INCIDENT.

- 3.1 The Umpires informed the Match Referee⁴ that they had viewed the video footage, concluded on that basis that Mr Chandimal was in breach of clause 41.3 of the Playing Conditions and proposed accordingly to take the Prescribed Steps (but to postpone provision of their match report until later in the day so as not to cause any delay to the scheduled start of play). Thereafter, at about 9.15am and, at the request of the Umpires, the Match Referee visited the Sri Lankan teams' dressing room to inform the Sri Lankan team of the Umpires' conclusions based on the video footage and of their decision to take the Prescribed Steps. He explained the position to all three Defendants, but did not show them the video footage, which he did not have at that time.⁵
- 3.2 The Defendants were extremely unhappy at what they perceived to be an allegation of cheating. They claimed that they should have been informed about it at the close of play on the previous day with a hearing into the allegation before the start of play. The Match Referee explained that, given that the Umpires had only learned of the First Incident that morning their decision then to take the Prescribed Steps was impeccable. However, *"Mr Chandimal, Mr Hathurusinghe and Mr Gurusinha were adamant that the ball should not be changed and the penalty runs should not be applied unless and until a hearing had been held and Mr Chandimal had been found guilty of changing the condition of the ball.*

³ The Chandimal Award.

⁴ Precisely when they did so was a matter of controversy which I shall address under ANALYSIS.

⁵ He received it only at 12.30pm, reviewed it, and at 2.15pm showed it to Mr Gurushina.

*They stated that if these consequences were to be applied immediately, the Sri Lanka team would not take the field. If they were not applied immediately, they would take the field.”*⁶

- 3.3 In consequence the Sri Lankan team failed to take the field for the scheduled start of play that day (9.30am) (“the Second Incident; Part 1”).
- 3.4 At about 10.30am (after what was clearly a prolonged discussion) the Match Referee relayed to the Umpires the Defendants’ request for a hearing to precede the imposition of the Prescribed Steps, but the Umpires held their ground.
- 3.5 At about 10.40am the Match Referee therefore went back to the Sri Lankan dressing room and sought to persuade the Defendants to take the field. What if any inducements he gave them to do so is a matter in issue which again I shall address under ANALYSIS.
- 3.6 At approximately 10.55am the Sri Lankan team took the field but left it without a ball being bowled after the umpires changed the ball and signalled that 5 penalty runs should be awarded to the West Indies, “*Mr Chandimal and the Sri Lankan wicket keeper, Niroshan Dickwella, immediately protested to the umpires that such action was not in accordance with the agreement they had reached in the dressing room before the start of play. They claim it had been agreed that no penalty runs would be awarded. Mr Chandimal immediately led the team off the field and back into the dressing room, without a ball having been bowled. The umpires also came off the field and told the Match Referee what had happened*”⁷ (“the Second Incident Part 2”).
- 3.7 In an endeavour to ascertain the reason for the Sri Lankan team’s peremptory departure from the field of play, the Match Referee then met behind the sight screen Mr Hathurasignhe who said that the Umpire’s action was inconsistent with the team’s understanding that the Prescribed Steps would not be taken; the Match Referee responded that, on the contrary, he had at about 10.40am (see above para 3.5) told them that the Umpires would indeed take such steps.
- 3.8 Shortly before 11.30am, under threat of the Match Referee abandoning the Match and awarding the Match to the West Indies by forfeit under clause 16.2.1.2 of the Playing

⁶ Match Referee W/S para 9 a passage which was put to and agreed by Mr Chandimal.

⁷ The Match Referee W/S para 12.

Conditions, the Sri Lankan team eventually went back onto the field. Initially, however, its members simply stood inside the boundary rope and refused to go to the middle to commence play, only complying with the Match Referee's instruction to re-start play a few minutes later, some two hours after the scheduled start of play⁸ ("the Second Incident Part 3").

- 3.9 At 12.15 pm Mr Gurusinha advised the Match Referee by email that the Sri Lankan team was only playing 'under protest'.
- 3.10 In the afternoon Sri Lanka Cricket ("SLC") issued a press release, stating, inter alia, that they had been informed by the team management that the Sri Lankan players have not engaged in any wrongdoing during the Match, and that in the light of the Umpires decision "SLC advised the team to take the field to ensure the continuity of the match and wish to commend the decision taken by the team to continue with the game 'under protest' to ensure the upholding of the spirit of the Game" SLC also stated in that release that it would "take all necessary steps to defend any player, in the event any unwarranted allegation is brought against a member of the team".
- 3.11 On 19 June 2018, Mr Richardson charged the Defendants with conduct contrary to the spirit of the game in breach of Article 2.3.1 of the ICC Code of Conduct ('Conduct that is contrary to the spirit of the game').
- 3.12 On 21 June 2018, each Defendant filed a formal response, admitting the charge against him but seeking a hearing on the sanctions to be imposed for his offence.⁹
- 3.13 On 11th July 2018 I held a hearing by video conference in Blackstone Chambers (London). The ICC was represented by Jonathan Taylor QC and Max Latchmore (in London) and Sally Clark (in Dubai). Mr Chandimal was represented by Mr Chandaka Jayasundere, President's Counsel, assisted by Mr Pulasthi and Mr Mehran Careeem, Attorneys-at-Law (in Colombo) Mr. Chandika Hathurusinghe and Mr Gurusinha were represented by Mr. Kalinga Indatissa, President's Counsel, assisted by Mr

⁸ The Match Referee W/S, para 14: 'I advised the umpires, the two West Indian batsmen, and the Sri Lankan team to take the field in order for play to start at 11.30 a.m. The umpires and the West Indian batsmen did so, but the Sri Lankan players simply stood inside the boundary rope, and refused to go out to the middle'.

⁹ These admissions came before I had upheld the Match Referee's decision that Mr Chandimal had indeed unfairly changed the condition of the match ball, in breach of Article 2.2.9 of the ICC Code of Conduct (i.e. the First Incident).

Pulasthi, Mr. Isuru Balapatabendi, Mr. Charaka Jayarathne and Mr. Mahesh Senarathne, Attorneys-at-Law (also in Colombo).

3.14 I heard oral testimony from the Match Referee and the Defendants. Mr Richardson's witness statement was accepted unchallenged. I also received in the form of exhibits to the witness statements the Match Referee and Mr Richardson, undisputed written evidence, mainly formal documentation in connection with the charges or items in the public domain

3.15 I am grateful to all Counsel for their succinct and skilful presentations of their respective clients' cases and for the preparation made by the respective teams in advance and for the purposes of the hearing.

4. SALIENT PROVISIONS OF THE RELEVANT ICC INSTRUMENTS

4.1 The preamble to the Laws of Cricket states, 'cricket owes much of its appeal and enjoyment to the fact that it should be played not only according to the laws but also within the spirit of cricket' and in elaboration, inter alia 'Cricket should be played ... within the Spirit of Cricket'; 'Respect is central to the Spirit of Cricket'; 'Respect your captain, team-mates, opponents and the authority of the umpires'; 'Accept the umpire's decision'; 'Create a positive atmosphere by your own conduct and encourage others to do likewise'; 'Show self-discipline, even when things go against you.'

4.2 In the Playing Conditions, Clauses 2.6 and 41.2 state that 'the umpires shall be the sole judges of fair and unfair play'; Clauses 1.4 and 41.1 state that 'The captains are responsible at all times for ensuring that play is conducted within the Spirit of Cricket, as well as these Playing Conditions'.

4.3 The opening paragraph of the Code states that it is adopted to deter anyone from acting 'in a manner that is contrary to the Spirit of Cricket'.

4.4. The Offence is described in the Code as follows

"2.3 Level 3 Offences:

2.3.1 Conduct that is contrary to the spirit of the game.

NOTE: Article 2.3.1 is intended to cover all types of conduct of a very serious

nature that is contrary to the spirit of the game and which is not specifically and adequately covered by the specific offences set out elsewhere in this Code of Conduct. The spirit of the game is defined by reference to the Preamble to the ICC Standard Test Match, ODI and T20I Playing Conditions and involves respect for (a) your opponents, (b) your captain and team, (c) the role of the umpires and (d) the game and its traditional values.

See guidance note to Article 2.1.1 for examples of conduct that may (depending upon the seriousness and context of the breach) be prohibited under Article 2.3.1¹⁰

4.5 The sanction for the offence is described in the Code as follows.

“ARTICLE 7 SANCTIONS ON PLAYERS AND PLAYER SUPPORT PERSONNEL

COMMENT: The aim of the sanctioning regime under this Code of Conduct is to (a) sanction those Players and Player Support Personnel found to have committed an offence under the Code of Conduct, and (b) to act as a deterrent to other Players and Player Support Personnel to deter them from conducting themselves improperly on and off the “field of play”. The ICC believes that the threat of a suspension is the strongest deterrent to bring about a change in behavior. As such, a system of accumulated Demerit Points, which can lead to suspensions, in addition to the standard sanctioning regime, has been introduced into this version of the Code of Conduct.

7.1 Where a *Match Referee* or *Judicial Commissioner* determines that an offence under the *Code of Conduct* has been committed, he/she will be required to impose an appropriate sanction on the *Player* or *Player Support Personnel*.

7.2 In determining the appropriate sanction, the *Match Referee* or *Judicial Commissioner* shall take into account any factors that he/she deems

¹⁰ None of these examples appear to be pertinent to the second incident.

relevant and appropriate to the mitigation or aggravation of the nature of the *Code of Conduct* offence before determining, in accordance with the table set out in Article 7.3 below, what the appropriate sanction(s) should be.”

4.6 Article 7.3 provides that the range of permissible sanctions for a Level 3 offence such as the one charged here is the imposition of between four (4) and eight (8) Suspension Points (“the Prescribed Range”).

4.7 Article 7.4 provides “Where a *Match Referee* or *Judicial Commissioner* imposes a period of suspension on any *Player* or *Player Support Personnel*, then, unless such period is for a fixed period of time (for example, one year) then, any such period of suspension shall be referenced by *Suspension Points*, which shall carry the following weightings:

7.4.1 a *Test Match* or any other *International Match* of at least four days in duration is given a weighting of two (2) *Suspension Points*;

7.4.2 a *One Day International Match* or *Twenty20 International Match* is given a weighting of one (1) *Suspension Point*; and”

4.8 Article 7.9 of the ICC Code of Conduct provides that where Suspension Points are imposed against a *Player* or *Player Support Personnel*, then such Suspension Points are to be applied in accordance with the following principles:

- The *Judicial Commissioner* shall have regard to the *Player* or *Player Support Personnel*’s participation in the various formats of *International Matches* over the previous two years in order to determine which of the forthcoming *International Matches* the *Player* is most likely to participate, or the *Player Support Personnel* is most likely to assist the participation of a *Player* in.
- Where necessary, the *Judicial Commissioner* shall be entitled to consult with the ICC in order to make a determination as to which of the forthcoming *International Matches* the *Player* is most likely to participate in or the *Player Support Personnel* is most likely to assist the participation of a *Player* in.

- In so far as is reasonably possible, the Judicial Commissioner shall apply the Suspension Points to the subsequent International Matches in which the Player is most likely to participate in or the Player Support Personnel is most likely to assist the participation of a Player in, on a chronological basis immediately following the announcement of the decision.

5. THE ICC'S SUBMISSIONS

5.1 The ICC submits that what sanction I impose within the prescribed range should be based on my view of the seriousness of the conduct charged and admitted (both in terms of the fault of the Defendants and the impact of their conduct on the game), the need to punish the Defendants appropriately for that conduct, as well as the need to deter others from acting in similar fashion. In so doing, I am entitled to take into account any mitigating or aggravating factors.

5.2 The ICC submits that the conduct of each Defendant in all the circumstances of this case was "particularly egregious and damaging to the spirit of the sport", and therefore invites me to impose eight (8) (i.e. the maximum) Suspension Points on each Defendant. The reasons for this stance is set out in the accompanying witness statement of Mr Richardson (which I repeat, was unchallenged); it includes an eloquent and authoritative exposition of the concept of "the Spirit of Cricket" which I accept, borrow from, and part of which I annex to this Award.

5.3 ICC further rely on the following matters¹¹

(i) The conduct which gave rise to the charges showed a serious lack of respect for the authority of the match officials and a disregard of the interests of other stakeholders, spectators, broadcasters, commercial partners, and, particularly the West Indies cricket team.

(ii) The Defendants conduct seriously disputed the flow of the game. At the start of the third day, the Match was evenly poised, with the West Indies looking to capitalise on the helpful batting conditions on offer, but the West Indies batsmen were disrupted and denied that opportunity, because of the

¹¹ Again sourced in Mr Richardsons W/S paras 8-13.

length of time that the Defendants subsequently kept the Sri Lankan team from the field of play¹²

(iii) There are mechanisms within the Code that give players a full and fair opportunity to defend themselves from charges of breaches of the Code and/or to make submissions as to the appropriate sanctions to be imposed. Protests made through these procedures are legitimate; protests made on the field of play are not.

(iv) All the Defendants are in positions of authority. Mr Chandimal as the experienced captain of the Test team, Mr Hathurusinghe as team coach and Mr Gurusinha as team manager, had the primary responsibility within the tour party to act as leaders and role models, ensuring that the spirit of the game was upheld. Their actions defied that spirit showed a lack of self discipline and created a very negative atmosphere in and around the match.

(v) The Defendants had not apologized for their actions

5.4 The ICC also notes that the Match Officials warned the Defendants before the series began that the 'Spirit of Cricket' was sacrosanct and needed to be respected to the utmost by all participants in the series.¹³

5.5 The ICC submit that only the maximum penalty is appropriate to deter both the Defendants and others governed by the Code from behaviour so hostile to the Spirit of Cricket.

¹² The ICC cite an email from Jonny Graves, the CEO of the West Indies Cricket Board, complaining that the delays in the start of play had '*clearly affected our batsmen*' (Devon Smith and Shai Hope), and asserting that '*the match is now a complete farce. By losing two hours of play in ideal batting conditions and having been ready to play three times only to be delayed, with no clear direction from the match officials as to when play would restart our team was clearly disadvantaged. Whilst our players were understandably angry and adversely effected by the disruption they took the field in the faith that ICC would act decisively and fairly at the close of play. We are now all of the view that the context of the game has fundamentally changed and the match should be abandoned and awarded to the West Indies. We cannot allow teams to refuse to take the field and show such disrespect to the ICC match officials, laws and spirit of the game, opposition team and cricket fans*'.

¹³ See Match Referee W/S, paras 4 and 5.1.1.

5.6 The ICC contend too that the fact that Mr Chandimal, Mr Hathurusinghe and Mr Gurusinha have admitted the charges indicates that they now accept that they had no good excuse for their conduct¹⁴

6. THE DEFENDANT'S SUBMISSIONS

6.1 The Defendants do not take issue with the ICC's contention as to the general approach which I should adopt but submit that in all the circumstances the suspension points to be imposed should be at the lower rather than the higher end of the prescribed range.

6.2 While not seeking to contradict my holdings in the Chandimal award¹⁵ that (a) the Umpires were not obliged to identify an offence of unlawfully changing the conditions of the ball on the same day as the offence's occurrence (as a condition precedent for any further action by Umpire or Match Referee) (b) the fact that the Umpires Report was not filed within the prescribed time again did not inhibit the bringing of charges, the Defendants point out that it was common ground in point of fact by that

(i) No allegation of ball tampering was made against Mr. Chandimal during play during the second day's play; nor had any official noted any change in the condition of the ball on that day.

(ii) The required Umpires match report was not filed until midday on the third day of the match¹⁶.

(iii) The Match Referee did not provide any evidence of ball tampering to the Defendants prior to the start of play other than by indicating that there was video evidence available, and indeed relied exclusively on what he had been told by the Umpires).

¹⁴ The ICC also draw my attention to the following precedents, involving defiance of umpire's decisions and interruptions of play Arjuna Ranatunga - 1999 Inzamam-ul-Haq - 2006 ("the Precedents") while recognizing that they have at most persuasive force.

¹⁵ In the section entitled VALIDITY paras 4.1- 4.10

¹⁶ An ingenious submission, focussed on the word 'then' in the last sentence of Playing Condition Clause 43.5.2, to the effect that the information orally communicated to the Match Referee by the Umpires of the video footage and their reaction to it disordered the Prescribed Steps, foundered on the fact that the report referred to in that provision was the formal written report and not any earlier oral communication. The provision properly construed envisaged that such report would only be made after the on field sanctions had been applied.as indeed occurred in this case.

It was therefore unsurprising, it is submitted, that the Defendants, confronted for the first time and shortly before the scheduled start of play, with such a serious allegation reacted by seeking to have, in fairness, an inquiry into whether the allegation was well founded before any sanctions of any kind were imposed. As it was succinctly put in the skeleton argument *"It is axiomatic that a group of sportsmen about to set-foot to the field of play (in a highly competitive game) would have an emotional and reflexive reaction to such an allegation in its immediate aftermath"*.

- 6.3 The Defendants further submit that the Playing Conditions themselves under 41.3.5 provide for what should have happened once the Umpires had reached their conclusions about the alleged ball tampering. Without any prior intervention of any kind by the Match Referee, the Umpires should, once the teams had come out onto the field at the scheduled start of play announced their decision to take the Prescribed Steps. Instead the Match Referee without any foundation in those Conditions (even if not in actual defiance of them) took it upon himself to pre-announce to the team what the Umpires, in exercise of an authority which belonged uniquely to them, had decided, and by that and his subsequent to-ing and fro-ing between Umpires and team was himself the cause of the delays complained of which would (or at least might) not have occurred had only the steps specifically contemplated by the Playing Conditions and no others been taken.
- 6.4 For their part, it is argued, the Defendants had no intention whatsoever of delaying the start of the match or disrupting its flow or to show lack of respect to the Match Officials but were simply - it is said *"desperately"* - seeking some clarity on the unfolding events about which they had admittedly no information until just before the start of play.
- 6.5 The Match Referee's responsibility for the unfortunate sequence of events was compounded by his statement (or offer) at some stage before the Sri Lankan team finally took to the field at 10.55am that the Umpires were prepared at any rate not to award 5 penalty runs to the West Indian team, so causing the Sri Lankan team to walk off the field once they ascertained that this was not the case.
- 6.6 The Defendants asserted in their Skeleton argument that *"The maxim of quod approbo non reprobo means that, the ICC cannot "approve" the Code by accepting the benefit it confers and at the same time "reprobate" it, by denying the effect of its other in terms specifically, the*

procedure set out in Article 3¹⁷ and Article 4.1¹⁸¹⁹ (“the Blowing Hot and Cold argument”).

6.7 The Defendants further observe that in the formal Notice of Charge document the Proposed Sanction for each Defendant was Six (6) Suspension Points only.

6.8 The Defendants’ also pray in aid finally their previous clean record.

7. ANALYSIS

7.1 I accept that how many suspension points I impose within the Prescribed Range should be informed by my view of the seriousness of the conduct charged and admitted (both in terms of the fault of the Defendants and the potential impact of their conduct on the game), the need to punish the Defendants appropriately for that conduct, as well as the need to deter others from acting in similar fashion. I am entitled, indeed obliged, in accordance Article 7 of the Code, (reflecting general sentencing principle, appropriate to disciplinary as it is to criminal offences) to take into account any mitigating or aggravating factors.

7.2 In my view it is vital to recognize that under the ICC governing instruments there are two discrete sets of relevant provisions; the Playing Conditions which confer unique authority upon the Umpires to make decisions on the field of play, including the taking of the Prescribed Steps²⁰ and the Code which provides for any consequences of, inter alia, offences on the field of play including the imposition of penalties by the Match Referee (after any hearing requested or required) or the bringing of charges by the ICC CEO to be adjudicated upon by a Judicial Commissioner.²¹ In summary on field and off field sanctions are discretely treated. Such recognition of the special role of

¹⁷ Entitled REPORTING THE ALLEGED OFFENCE UNDER THE CODE OF CONDUCT

¹⁸ Entitled NOTIFICATION PROCEDURE

¹⁹There was another not wholly unrelated submission that the treatment of the Defendants was inconsistent with, and harsher than, the treatment of the Australian cricketers involved in the so-called Sandpapergate affair. No evidence was provided in support of this unheralded submission and I shall ignore it not least because I cannot see how the Umpires in the present case could have done other than take the Prescribed Steps whatever had been done (or not done) by other Umpires in such situations.

²⁰ See again Clause 41.

²¹ See The Code especially Articles 3-8.

competition officials in a variety of sports, and their immunity from review (other than any which the sport's own rules expressly provide) unless infected by bad faith or corruption is an aspect of the increasingly influential *lex sportiva*.

- 7.3 It follows inexorably from this premise that the purported justification for the conduct of the Defendants under the Second Incident Part 1 i.e. that they considered that no penalty should be imposed for Mr Chandimal's alleged ball tampering, unless and until a hearing had been held at which Mr Chandimal had been given a chance to defend himself flies in the face of clause 41.3.5 of the Playing Conditions, which expressly requires the Umpires to take exactly the action they did take once they had decided that an identified player (here, Mr Chandimal) had changed the condition of the ball in breach of that Playing Condition. Mr Chandimal's opportunity (which he took) to challenge the allegation of ball tampering was to be accorded at a later hearing before the Match Referee and on appeal before me.
- 7.4 To seek to insist on a hearing before the imposition of any on field sanction as a precondition of taking the field of play not only confused and conflated on field and off field sanctions but inevitably involved(despite the Defendants' strenuous denials that such was not their intention) disrespecting the Umpires' authority. Mr Chandimal sensibly admitted awareness of crickets governing instruments; and, as a matter of principle²² none of the Defendants did or could rely upon ignorance of the rules or laws contained in them. The Spirit of Cricket, as I have already stated, expressly enjoins respect for the authority of the Umpires and acceptance of their decisions at the time they are made. Indignation could not excuse, even if it explained, the Defendants' reactions when confronted with the Match Referee's indication to them in the dressing room as to what the Umpires proposed.
- 7.5 I have not been asked by any party to treat the cases of the three Defendants differently; but I am constrained to observe that while the team manager and team coach could in good faith assert that, when first confronted with the allegation of the Captains ball tampering, they had no knowledge whatsoever of it, it is difficult in the light of my finding in the case against Mr Chandimal for me to accept that the same plea is open to him. He repeated to me in the present hearing that he had no intention of unlawfully altering the condition of the match ball. I have already rejected that

²² Ignorantiam haud excusat lex.

defence for reasons explained in that award²³. On the most charitable view of his own stance in the dressing room he was simply challenging the Umpires, on whom the burden lay, to provide evidence in support of their case against him (as in principle he was entitled to do). But in the light of my conclusions on the three cases (see below para 8.1.) it is not necessary to explore this issue further.

7.6 As to the criticism made of the Match Referee's actions I find it unfair. There was a reference during his cross-examination to a recording in which he was alleged to have said that 'us' (sic) were aware of the video footage at 8.30 am rather than 9am (as he said in his witness statement). This recording was never disclosed prior to the hearing or produced at it and I would have therefore been inclined to hold it inadmissible; but the Match Referee explained impromptu that any such allusion would have been to the existence, not the content, of the video footage. In any event, save in so far as this was said to bear on the contention that the Match Referee ought to have procured, seen and produced to the Defendants the video footage before confronting them with the allegation of ball tampering, it seemed to me that this timing issue was immaterial.

7.7 As to that same contention, such exercise, which the Match Referee candidly conceded he could in theory have carried out, would itself in practice have necessarily caused delay to the start of the Match which, in the interests of all stakeholders, the West Indies, team the spectators, the broadcasters and the commercial sponsors, the Match Referee was rightly anxious to avoid. It would also have been gratuitous since it could not have in any way affected the Umpires' performance of their duty promptly to take the Prescribed Steps or enabled the Defendants to inhibit it. There is a certain inconsistency in the Defendants' criticism, on the one hand, of the Match Referee for giving the Sri Lankan team any advance notice of the Umpire's conclusion as to the ball tampering and their decision to take the Prescribed Steps and, on the other hand, of not protracting such notice by procuring and producing the video footage.

7.8 While I accept that the Match Referee was not obliged to give the Sri Lankan team such advance notice (and that it is not provided for-though I emphasise-not proscribed by any relevant legal instrument) I find it entirely intelligible that he should, as he put it, ensure, at the request of the Umpires, whom he rightly trusted, that the team was "*not taken by surprise*". I find the submission that, had the Match Referee declined to take

²³ See Chandimal award para 6.5.

such a course so leaving the Umpires to tell the Sri Lankan team at the start of play, without any prior warning, of their conclusion as to ball tampering and their decision to take the Prescribed Steps, the team would simply and loyally have accepted the on field sanction without dissent and played on, not only bold but, on the evidence, wholly unrealistic. It was the substance of the serious allegation, made as the Defendants and the team saw it, out of the blue and only after the day when the first incident occurred, which provoked their reaction. It was the song, not the singer, which aggrieved them.

- 7.9 I accept that the shuttling to and fro by the Match Referee between team and umpires was again not expressly envisaged in the Playing Conditions and indeed itself added to the delay. He could, I recognize, have stood by his view, already conveyed to the Defendants that the Umpires action was strictly and wholly *intra vires*; and with the benefit of hindsight might have been best advised to do so. But I also find that the Match Referee was commendably seeking to achieve a consensus as early as possible. It was the Defendants who were defying the Playing Conditions and whose words and deeds compelled him to seek a solution. They were therefore authors of their own misfortune. The fault was theirs, not his.
- 7.10 As to the Second Incident Part 2 there is an important issue of fact to be resolved. Did the Match Referee as an inducement to the Sri Lankan team to take the field of play in some way create in them an expectation that the Umpires would not award five penalty runs to the West Indies? This was indeed the evidence of all three Defendants.
- 7.11 There were, I note, unsatisfactory features of that evidence (i) The witness statements of all three were in identical form and language. That was necessarily contrived rather than coincidental - maybe a lawyers' rewrite but certainly not the *ipsissima verba* of each Defendant (ii) The evidence was inconsistent with the skeleton argument (Para 1.6) that the Match Referee had said that neither of the Prescribed Steps (i.e. not only the awarding of penalty runs) would be taken if the Sri Lankan team took to the field (iii) The witness statements were glossed and garnished under cross-examination in what appeared to be a self-serving manner (iv) The form of the inducement relied on was volatile; was it a statement of what would happen, or an offer of what could happen? (v) The timing of when the inducement was allegedly made seemed to vary between submission and evidence.

- 7.12 There was also an inherent unlikelihood in the highly experienced Match Referee saying anything to the effect that the Umpires would deviate from what he knew-and had already explained- to be their duty as mandated in the Playing Conditions or that the Umpires would ever have agreed to do so. I am entirely confident that the Match Referee (who was subjected to a testing cross-examination under which he did not retreat in any essential way) made no such statement (or offer).
- 7.13 That said, I still need to make a finding as to why on retaking the field at 10.55am the Sri Lankan team promptly abandoned it. Unless this was part of some malign prearranged plan (which was not suggested and was never put by the ICC) the only conclusion that I can draw, despite all the reservations listed in para 7.9 above is that there was a measure of misapprehension, on the Defendants' part, coloured it may be, by wishful thinking, high emotion and their sense (albeit misconceived) that this would be the only just outcome, about the terms upon which they were to recommence play. I am comforted by the fact that the Match Referee has expressly acknowledged the possibility of a "*clear misunderstanding*"²⁴ (sic). The tense and unhappy atmosphere that clearly prevailed provided fertile soil for such misunderstanding. But again I find that such explanation does not mature into an excuse since no responsibility can be laid off on the Match Referee, whose statements I find to have been at all times clear and consistent with his accurate appreciation of the Playing Conditions.
- 7.14 As to the Second Incident Part 3 I find that the behaviour of the Team, for which the three Defendants in light of their role and status must take the blame, was a further exhibition of truculence; and I find the submission that, by being within the boundary, albeit not in the middle, the team and the Defendants were respecting their obligation to play as, in a phrase once used of a prominent British Minister, "too clever by half". The Sri Lankan board's e mail put a retrospective spin (in the political not cricketing sense of the word) on the Team's behaviour, which did not in fact uphold the Spirit of the Game, but undermined it.
- 7.15 The Defendants repetitive behaviour exemplified in all three parts of the second incident were, in my firm view, in various ways and to different degrees consistently at odds with the Spirit of Cricket. They respected neither that Spirit, the relevant rules which fleshed it out, or the authority of the officials who applied them. They exhibited

²⁴ Match Referee W/S para 14.

not self-discipline, but ill-discipline when things went against them, even if they genuinely but wrongheadedly thought Mr Chandimal's and the team's treatment unfair. As three persons in such senior positions they should have been leaders by example, rather than ring leaders of dissent. I am not oblivious to the natural tendency of those who sees themselves (whether rightly or wrongly) as victims of unauthorised procedures and unevidenced criticism to stick together, but, I repeat, emotion is no exculpation. A message must be sent out not only to these Defendants but to the cricketing community generally that such behaviour is unacceptable and must and will be visited with condign punishment.

7.16 Dealing briefly with other matters in play

- (i) While I am declined to speculate on the impact of their actions on the course of the match (precisely because it would be speculation), I can conclude that those actions had foreseeable tendency to affect it to the detriment of all stakeholders.
- (ii) The e mail from the Sri Lankan cricket board was subject to criticism by the ICC; but in my view the Board's actions cannot be attributed to the Defendants save in so far as they intentionally contributed to those actions (and the extent to which they did so has not been explored).
- (iii) I do not regard the Defendants admission of the offences as foreclosing their opportunity to make any submissions as to the quantum of penalty in terms of mitigation or otherwise. (But I have not found any convincing mitigation and, given that the Prescribed Range refers to a first offence, a previous clean record is immaterial)
- (iv) If anything the offences were aggravated by the fact that there had not only been general emphasis from the ICC on the need to respect the Spirit of Cricket in the wake of so called Sandpapergate, but both teams (Sri Lankan and West Indian) before the present series had been reminded of their duties in that regard.
- (v) The Defendants did in fact apologise in their witness statements, filed on the eve of the hearing, but not earlier. The impact of this is therefore in terms of sanction effectively neutral.

- (vi) The blowing hot and cold argument cannot achieve lift off once it is appreciated, as I found in the Chandimal award, that the late delivery of the Umpires' written report was at most, a technical breach of a non mandatory provision, if a breach at all. The ICC cannot therefore fairly be accused of cherry picking those parts of the Code on which it relies to support its case while ignoring, when it suits it, other parts.
- (vii) The proposal of 6 points only by way of suspension in the Notice of Charge was expressly made conditional in that document on an admission and acceptance of the penalty. In this case by contrast the Defendants wished for, and had, a hearing to ventilate their arguments on sanction.
- (viii) While I was grateful for the Precedents produced I remind myself that when flexible rather than fixed penalties are to be applied for disciplinary offences, context and circumstance is all important; slavish adherence to what may be an inappropriate application of principle in an earlier case can lead to the perpetuation of error. I hasten to say that I neither can nor do make any criticism of the Precedents but they assist me only to the extent that they show that unjustified disruption of play and flouting the authority of Umpires has always been (rightly) regarded as a serious matter.

7.17 I was tempted, as will have appeared from some of my designedly probing questions to the ICC's counsel during the course of the hearing, not to impose the maximum sanction because I could envisage cases in which, for whatever reason and without even a colourable excuse of the exceptionality of circumstances, there was a still more blatant defiance, by persons subject to the Code, of the Spirit of Cricket and its associated rules. Upon reflection, however, I have decided that the question for me is not whether the admitted offences were the worst type of Level 3 offences which could be committed, but whether in the light of the language and purpose of the rules as to sanction, a maximum amount of suspension points was on the facts of the particular cases warranted.

8. CONCLUSION

- 8.1 For the reasons set out in ANALYSIS, critical of the Defendants' behaviour, I have concluded that the maximum period of suspension is warranted in the case of all Defendants.
- 8.2 All three Defendants participate in all three formats of International Matches and the ICC considers that they are likely to participate in all three formats moving forward including in the series due to start on July 12 2018 against South Africa which consists of the following matches
- . 1st Test – Galle – 12 July 2018 – **Match A**
 - . 2nd Test – Colombo – 20 July 2018 – **Match B**
 - . 1st ODI – Dambulla – 29 July 2018 – **Match C**
 - . 2nd ODI – Dambulla – 1 August 2018 – **Match D**
 - . 3rd ODI – Kandy – 5 August 2018 – **Match E**
 - . 4th ODI – Kandy – 8 August 2018 – **Match F**
 - . 5th ODI – Colombo – 12 August 2018 – **Match G**
 - . T20I – Colombo – 14 August 2018 – **Match H.**
- 8.3 In my view, in application of the principles in Article 7.9 of the Code the Suspension Points imposed by me, should be applied to the International Matches forming part of the South Africa series, on a chronological basis.
- 8.4 As 8 Suspension Points have been imposed, they would be applied to the 2 Test Matches A & B and the first 4 ODI matches in the series Matches C-F inclusive. However, it being recognized by the Defendants that the minimum sanction I could ever have imposed, would have been 4 suspension points so disqualifying them from any participation in the first two imminent test matches between Sri Lanka and South African an undertaking was helpfully given at the hearing that none would so participate, so relieving me of the duty to reach a decision (albeit without reasons) on the day of the hearing itself. The suspension voluntarily so served must be taken into account in application of my decision with the consequence that the Suspension of each Defendant will henceforth apply to the first 4 ODI matches but no further.

Michael J Beloff QC Judicial Commissioner

16 July 2018

ANNEX

“4. There is a unique and unwritten ‘Spirit of Cricket’ that transcends the sport and embeds a culture of respect (for fans, for each other, for the officials, and for the game itself) that drives how people within cricket behave towards each other. This has evolved over generations and has helped to forge cricket’s global standing and reputation as a sport with strong core values and high integrity. The pervasiveness of this unique ‘spirit’ is reflected in the common English phrase ‘it’s just not cricket’, which is synonymous around the world with something that is unjust or plain wrong.

5. In the ICC's view, cricket must aggressively defend its position as a sport with a strong moral code and core set of values in order to continue to make it an attractive proposition for children, families and parents to play, follow and attend and for commercial and other partners to support and invest in. As the preamble to the Laws of Cricket states, 'cricket owes much of its appeal and enjoyment to the fact that it should be played not only according to the laws but also within the spirit of cricket'.

...

7. The global public reaction to the Australian ball tampering scandal earlier this year was an eye opener for all of us as to what the public expects. In response, I and others at the ICC decided that there was a pressing need for cricket to take a long hard look at itself, draw a line in the sand, and take collective action to improve behaviour, particularly that which goes against the spirit of the sport. As I said publicly, the phrase 'that’s just not cricket' needs to remain relevant. On 1 April 2018, I announced that as a result the ICC would be conducting a review into player behaviour. I said: 'This is an opportune moment, therefore, to shape what the game looks like in the 21st century and take a much broader look at the issues currently facing the sport and consider how we define what it means to play within the spirit of the game. The spirit of the game, contained in the preamble of the laws of cricket, is something unique to our sport and the review will consider how we can proactively make players and indeed everyone involved in the game, more accountable for the role they have in upholding the spirit of cricket. Respect is central to the spirit of cricket and rebuilding and maintaining a culture of respect that can be embedded across the game is fundamental to what this review is trying to achieve' That review is ongoing, and I expect it will include changes to the Code of Conduct to increase the sanctions applicable for conduct that contravenes the Code.”