

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

Between:

THE INTERNATIONAL CRICKET COUNCIL (“ICC”)

And

MR SANATH JAYASURIYA

Decision pursuant to Article 5.1.12 of the ICC Anti-Corruption Code

INTRODUCTION

1. The International Cricket Council (the “ICC”) is the international governing body for the game of cricket and as such is responsible for the development, co-ordination, regulation and integrity of cricket worldwide.
2. As part of its continuing efforts to maintain the integrity, public image and popularity of cricket, the ICC has adopted and implemented the ICC Anti-Corruption Code (as in force and amended from time to time) for Participants (the “**Code**”), which sets out a framework of rules designed to provide: (a) a means to deter any participant from engaging in any form of corrupt conduct; and (b) a robust disciplinary procedure pursuant to which all allegations of Corrupt Conduct can be dealt with fairly, effectively and expeditiously.
3. Sanath Jayasuriya is a former captain of the Sri Lankan national cricket team. He has had an illustrious cricketing career. Between 1991 and 2011 Mr Jayasuriya represented Sri Lanka in 110 Test matches, 445 One Day International matches, and 31 Twenty20 International matches and he was part of the Sri Lanka team that won the 1996 ICC Cricket World Cup. More recently, he has served as chairman of the Sri Lanka Cricket (“**SLC**”) selection committee, a role he held from April 2016 until he retired on 7 September 2017.

STATUS AS A PARTICIPANT BOUND BY THE CODE

4. As a result of his position as chairman of the SLC Selection Committee, Mr Jayasuriya constituted a Participant for the purposes of the Code - specifically, by virtue of being a 'Player Support Person' under of Code Article 1.4.2. As such, he was automatically bound by the Code and agreed, among other things, (i) to comply with the Code; (ii) not to engage in conduct that would constitute a breach of the Code; and (iii) to submit to the jurisdiction of the ICC to investigate apparent or suspected Corrupt Conduct that would amount to a violation of the Code (Code Article 1.5).

SUMMARY OF RELEVANT BACKGROUND FACTS

Demand made of Mr Jayasuriya

5. As part of an investigation into corruption in Sri Lankan cricket, on 22 September 2017 Mr Jayasuriya was interviewed by two members of the ICC's Anti-Corruption Unit (the "ACU").
6. Prior to that interview, the ACU General Manager, Mr Alex Marshall, was satisfied that information sent and/or received by mobile devices belonging to Mr Jayasuriya in the period 1 January 2017 to 22 September 2017 might be relevant to the investigation. Mr Marshall therefore authorised, in accordance with ACU standard operating procedures, the service on Mr Jayasuriya of a 'Demand' pursuant to Code Article 4.3.
7. The Demand was handed to Mr Jayasuriya during the interview on 22 September 2017 and its content was also read out to him. The Demand required Mr Jayasuriya to immediately hand over his mobile phones so that the ACU could download information from them. The Demand also required Mr Jayasuriya to provide various specified information to the ACU by 6 October 2017, including (in summary) copies of telephone billings for the mobile phones in his possession for the period 1 January 2017 to 22 September 2017, bank account information for a specified period, a list of benefits received exceeding a certain value, and details of property he owned.
8. The Demand contained the following express warning: *"If you do not allow the ACU to take possession of and/or copy or download information from your Mobile Device(s), or do not otherwise cooperate fully with the Demand, then that may constitute conduct that amounts to an offence under the Code."*
9. The Demand also stated: *"You may wish to consider obtaining independent legal advice following receipt of this Demand but, in circumstances where you wish to do so, the ACU will need to take reasonable steps to ensure that the integrity of the Mobile Device is not lost and that potential evidence is not concealed, altered or destroyed in meeting the request for legal advice."*

Information provided to the ACU by Mr Jayasuriya during the 22 September 2017 interview

10. During the course of the interview, Mr Jayasuriya was specifically asked to (i) give the ACU details of all mobile phones and phone numbers that he owned or used or had access to, and (ii) immediately hand over his mobile phones to the investigators in order to allow them to download information from the phones.
11. When asked how many mobile phones he had, Mr Jayasuriya replied that he had two, being a Samsung device with a number ending '008' and an iPhone with a number ending '969'. He also confirmed that he had no other numbers, and that any previous numbers had been disconnected.
12. Mr Jayasuriya handed over the two mobile phones to the ACU, but made a request that he be afforded the opportunity to consult with his lawyer before consenting to the download of material from those phones. The interview was therefore suspended in order to allow for this, and resumed after a period of around 30 minutes.
13. Upon resumption of the interview, Mr Jayasuriya again confirmed that he only had two phones and that he did not use any more than that. He was advised by the representatives from the ACU, and confirmed that he understood, that if he did not make a full and truthful disclosure in respect of the phones that he used, that he may commit an offence of the Code.

14. Mr Jayasuriya then signed the consent at the end of the Demand, signifying his agreement to the ACU downloading the content of the two mobile phones he had handed over.

Second interview, 23 September 2017

15. The following day, on 23 September 2017, a second interview was conducted with Mr Jayasuriya, during which the two mobile phones he had previously handed over to the ACU were returned to him (information having been downloaded from them). Mr Jayasuriya was legally represented at this interview.
16. During the course of the second interview Mr Jayasuriya told the ACU for the first time that he previously had and used two other mobile phones that he had not mentioned the day before, being (i) another Samsung phone, with a number ending '888'; and (ii) another iPhone, with a number ending '088'. Mr Jayasuriya said that he had "lost" these two phones "by accident" as a result of them falling out of his back pocket in "a grassy area" somewhere in Colombo at some point between 15 May and 23/24 May 2017. He further stated that he had called his service provider to report the phones as missing, that the service provided had been unable to locate the phones for him, that he was "certain" he had not used the numbers since 23/24 May 2017, and that if billing records were obtained from the service provider for those two numbers they would show that he had not used them since 23/24 May 2017. Mr Jayasuriya said that anyone who called the numbers after that date would have got an automated response from the service provider, saying that the customer called had not responded and to try again later. When asked by the ACU as to why he had not mentioned these mobile devices the previous day, Mr Jayasuriya responded that he had not thought of them because he was "not using them", explaining that he had obtained the phones that he had mentioned the day before in order to replace these lost phones. Mr Jayasuriya also stated that he did not keep any other mobile phone at his home.
17. However, unbeknownst to Mr Jayasuriya, the ACU had attempted to call the '888' number on 22 September 2017 and the morning of 23 September 2017. On each of those occasions, the phone had rung but had not been answered and had gone through to a messaging service, i.e., the phone with that number appeared to be switched on. However, when the ACU representatives then rang the number again during the second interview, there was an automated response ("The Dialog you called has not responded. Please try again later"), i.e., the phone with the '888' number appeared to have been switched off since the ACU had previously called it.

Third interview, 5 October 2017

18. Two weeks later, on 5 October 2017, Mr Jayasuriya was interviewed again. Mr Jayasuriya was again legally represented.
19. At the beginning of the interview, Mr Jayasuriya's lawyer advised the ACU that he wished "to make certain further clarifications with regards to the statement already made by Sanath in Colombo. ... When the statements were recorded, he came out with the fact that he lost two phones. ... What he meant by he lost two phones [is] that he has destroyed the phone ... 888".
20. Mr Jayasuriya then stated as follows:
 - 20.1 Contrary to what he had said on 23 September 2017, he had not lost the phone with the number 888. Rather, he claimed that on 24 May 2017, which was the day that a private video featuring him was posted online, he was being hounded by journalists and was

under great stress. As a result, he said, he threw the phone on the ground and "trashed" it on purpose.

20.2 Mr Jayasuriya's driver had then picked up the damaged phone and taken out the SIM card, which he gave to Mr Jayasuriya about six days later. However, he did not give Mr Jayasuriya the phone itself and Mr Jayasuriya did not have it any longer.

20.3 After about 3-4 weeks he (Mr Jayasuriya) put the SIM card into another phone (an old iPhone that he had) in order to check for text messages sent to that number, and that he checked the phone again for texts from time to time after that, but he did not use the number for calls, because everyone knew that number, and he did not want to be hounded with further calls on it.

20.4 That while he kept the iPhone with the SIM card in it during the week, at the weekends he had given the old iPhone with the SIM card back to his driver and that his driver monitored calls received on it, which was his explanation for why the number had rung through to a messaging service when the ACU representatives had called it on 22 September 2017 and on the morning of 23 September 2017.

21. Mr Jayasuriya's lawyer then said: "this [is] only one mistake he has done. Whether it's a mistake or a lie or being untruth or a violation, gentlemen, you will have to decide. ... That is the fact that he did not reveal about the destruction of the phone. What he should have – I advised him immediately that you should have said so. That is why I'm here. ... why we came here ... was to tell what he has to say, which I ... think he should have said ... at the beginning".

22. Mr Jayasuriya then handed over the iPhone with the SIM card for the '888' number at that point, i.e., on 5 October 2017, in Dubai, two weeks after being served with the Demand Letter.

Usage of the '888' number

23. After the third interview the ACU was able to establish that the '888' number was actively used between 25 May 2017 and 5 October 2017:

23.1 According to the billing records, there were hundreds of outgoing texts and calls for the period 15 March 2017 to 14 September 2017 (the billing records do not record the number of incoming texts and calls for that period).

23.2 On 2 June 2017, the iPhone provided to the ACU on 5 October 2017 had received a WhatsApp message, the content of which appeared to be a letter from Mr Jayasuriya, which concluded, 'please feel free to contact me on ...888' (i.e., the number Mr Jayasuriya said he did not use for calls in this period).

23.3 In addition, examination of that iPhone (and the SIM card it contained) revealed that in the period 15 to 23 September 2017 the device was actively used to make at least 21 outgoing calls and SMS (15 calls, 6 SMS) and received 7 calls (as well as a number of incoming messages and missed calls). Further, during the period 24 September to 5 October 2017, the phone received at least 44 SMS and 6 missed calls.

RELEVANT PROVISIONS OF THE CODE

24. Code Article 2.4.6 makes the following an offence:

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

25. Code Article 2.4.7 makes the following an offence:

"Obstructing or delaying any investigation that may be carried out by the ACU in relation to possible Corrupt Conduct under the Anti-Corruption Code (by any Participant), including (without limitation) concealing, tampering with or destroying any documentation or other information that may be relevant to that investigation and/or that may be evidence of or may lead to the discovery of evidence of Corrupt Conduct under the Anti-Corruption Code".

NOTICE OF CHARGE AND ADMISSION

26. Following its investigation, on 15 October 2018, the ICC issued a Notice of Charge, which charged Mr Jayasuriya with a breach of Code Article 2.4.6 and (alternatively) Code Article 2.4.7. Those charges were issued as a consequence of his following acts and omissions:

- 26.1 Stating inaccurately during the ACU interview on 22 September 2017 that:
- a. he only ever had two phones; and
 - b. he had only used those two phones, had not used any other phones, had not in the past used more than two phones and that any other number that may have been used had been 'disconnected'.
- 26.2 On that basis, only submitting two phones to the ACU for download on 22 September 2017;
- 26.3 Not disclosing during the ACU interview on 22 September 2017 that he also had an iPhone with the number ending '888' that was capable of making/sending and receiving calls and texts and other data, and that was in fact making/sending and receiving calls and texts and other data;
- 26.4 On that basis, not handing over that iPhone or SIM card for downloading on 22 September 2017.
- 26.5 Stating inaccurately during the ACU interview on 23 September 2017:
- a. that although he had previously had another Samsung phone, with the '888' number he had 'lost' that phone "by accident" by it falling out of his back pocket in "a grassy area" somewhere in Colombo at some point between 15 May and 23/24 May 2017;
 - b. that he had called his service provider to report that he had lost that phone, that his service provider had not been able to locate that phone for him, that he was 'certain' that he had not used that number since 23/24 May 2017, and that if billing records were obtained from the service provider they would show that he had not used it since 23/24 May 2017; and

- c. that he did not have any other phones.
- 26.7 On that basis, not submitting the phone with the SIM card with the '888' number on 23 September 2017 either.
- 26.8 Not disclosing until the third interview, two weeks later, in Dubai on 5 October 2017, that:
- a. he had not lost the phone with the '888' number at all, but instead had supposedly destroyed it intentionally on 24 May 2017;
 - b. he still had the SIM card with the '888' number after 24 May 2017;
 - c. after 24 May 2017, he had put that SIM card into an old iPhone that he had;
 - d. he had received calls and text on that number after 24 May 2017; and
 - e. he and/or his driver monitored use of the iPhone with the SIM in it after 24 May 2017.
- 26.9 Not handing over that iPhone or the SIM card for the '888' number until that date, i.e., 5 October 2017, two weeks after being served with the Demand
27. Following receipt of the Notice of Charge, on 16 October 2018, Mr Jayasuriya indicated to the ICC that he wished to voluntarily enter into a period of suspension pursuant to Code Article 4.7.5.
28. On 29 October 2018, the ICC then received correspondence in the form of a Response to the Notice of Charge from Mr Jayasuriya's lawyer, indicating that Mr Jayasuriya admitted the charges and expressing a desire to enter into an Agreed Sanction pursuant to Code Article 5.1.12.

AGREED SANCTION

29. Code Article 6.2 stipulates that the maximum sanction for a breach of Code Articles 2.4.6 and 2.4.7 is a period of Ineligibility of five (5) years.
30. Code Article 6.1 sets out the relevant factors that the Anti-Corruption Tribunal would be required to consider in determining the relative seriousness of the offence and thereby arriving at an appropriate sanction within that range.
31. It is acknowledged that any sanction imposed upon a Participant must be proportionate. In considering what is proportionate for the purposes of a decision under Code Article 5.1.12, the ICC must weigh the impact of a ban on Mr Jayasuriya against the importance of the objectives underlying the Code, the seriousness of the particular breach of the Code by Mr Jayasuriya, the need to deter others from similar wrongdoing, the need to protect the image of sport, and (above all else) the need to maintain public confidence in the determination of the sport of cricket to stamp out corruption.
32. First, it must be noted that in general terms a failure or refusal by a Participant (without compelling justification) to hand over documentation/information pursuant to a Demand, including in particular (where requested) his/her mobile phones, will give rise to an obvious inference that a Participant has committed another serious anti-corruption offence. In other words, that the reason for not providing the phone is because it has incriminating material on it that would reveal another serious anti-corruption offence. By analogy, in the anti-doping context, an athlete who refuses and/or fails

to provide a sample will receive the same sanction as an athlete who intended to cheat by using a prohibited substance i.e., the equivalent to the highest ban that would apply. In light of the foregoing, Mr Jayasuriya's breach(es) of the Code are inherently very serious, meaning that the ICC's view is that (before considering any mitigating or aggravating factors) the starting point is that a sanction at the top end of the permissible range under Code Article 6.2 would be appropriate.

33. Relevant mitigating factors in Mr Jayasuriya's case include the following:

31.1 Significantly, his prompt admission of his breach following receipt of the Notice of Charge.

31.2 His previously good disciplinary record over a lengthy period of time (although this is tempered somewhat by his failure to act as a role model to others in the sport); and

31.3 His remorse and contrition.

34. In all of the circumstances of the case, including giving Mr Jayasuriya credit for agreeing an outcome that avoids the need for a hearing and saves considerable time and money for use elsewhere in the fight against corruption, the ICC considers that a period of two (2) years' ineligibility is reasonable and appropriate.

35. Mr Jayasuriya has agreed to and accepted this sanction. As such, a period of two (2) years' Ineligibility is imposed. In accordance with Code Article 4.7.5, and the fact that Mr Jayasuriya's period of self-imposed suspension began on 16 October 2018, Mr Jayasuriya will remain Ineligible until midnight on 15 October 2020.

36. During this period of Ineligibility, in accordance with Code Article 6.5, Mr Jayasuriya is prohibited from playing, coaching, officiating or otherwise participating or being involved in any capacity in any Match or any other kind of function, event or activity (other than authorised anti-corruption education or rehabilitation programs) that is authorised, organised, sanctioned, recognised or supported in any way by the ICC, a National Cricket Federation, or any member under the jurisdiction of a National Cricket Federation.

37. The disposition of these proceedings on the terms set out above will be publicly announced by the ICC in accordance with Code Article 5.1.12.

38. In accordance with Code Article 7.2 neither Mr Jayasuriya nor the ICC shall have any right of appeal against this decision.

SUMMARY

39. To summarise:

38.1 Mr Jayasuriya admits that he has committed a breach of Code Articles 2.4.6 and 2.4.7.

38.2 A **period of Ineligibility of two (2) years is imposed** pursuant to Code Article 6.2, such period commencing from 16 October 2018.

38.3 Mr Jayasuriya's status during this period of Ineligibility is as detailed in Code Article 6.5.

- 38.4 This decision constitutes the final decision of the ICC in this matter. In accordance with Code Article 8.2, this decision will be disclosed publicly, including on the ICC's website.
- 38.5 There is no need for any further hearing in these proceedings, which are hereby terminated.

Dated 25 February 2019



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David Richardson

Chief Executive

International Cricket Council