IN THE MATTER OF PROCEEDINGS BEFORE THE ANTI-CORRUPTION TRIBUNAL ESTABLISHED UNDER THE ECB ANTI-CORRUPTION CODE ("The Code")

BETWEEN:

THE EMIRATES CRICKET BOARD ("ECB")
-and-
MR MARLON SAMUELS ("Mr Samuels")

AWARD ON THE MERITS

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1. Introduction

1.1 The ECB is the national federation responsible for the governance of the game of cricket within the UAE and an Associate Member of the ICC[1]. As part of its continuing efforts to maintain the public image, popularity and integrity of cricket, as well as in fulfilment of its obligations as a Member of the ICC, the ECB adopted and implemented the ECB Anti-Corruption Code (the Code) which is applicable to Participants in the T10 League ("the T10 event''). The Code sets out the details of the conduct that, if committed by a Participant in relation to a Domestic Match, will be considered an offence under the Code. It also provides a range of sanctions that are to be imposed in the event of the commission of an offence and sets out the disciplinary procedures to be followed where an offence is alleged.

1.2 The ICC's Anti-Corruption Unit (the "**ACU**") was appointed by the ECB as the Designated Anti-Corruption Official (the DACO) for the purposes of the Code at the T10 Event scheduled to be played in Abu Dhabi and thus under the jurisdiction of the ECB in November 2019 ('the 2019 T10 Event'). Consequently, all powers designated to the ECB and/or the DACO under the Code (including but not limited to the conduct of investigations, charging and provisional suspension decisions, and the conduct of disciplinary proceedings) were delegated by the ECB to the ACU. On the basis of this appointment and delegation, the ACU has been authorized to pursue these disciplinary proceedings against Mr Samuels on behalf of the ECB.[2]

1.3 Mr Samuels is a high profile former international cricketer, who played for the West Indies between 2000 and 2018. He played in over 70 Test matches and more than 200 ODIs. He last played for the West Indies on 14 December 2018 in an ODI against Bangladesh. In his international career, Mr Samuels has attended at least 9 ICC anti-corruption education sessions. Such sessions contain reminders of the obligations of Participants under the Code.

1.4 In 2021 the ECB charged Mr Samuels with various breaches of the Code in relation to the 2019 T10 Event.

1.5 The Tribunal has been appointed to adjudicate upon those charges (''the Charges'')

[1] The ICC is the international federation responsible for the global governance of the game of cricket. The ICC has two categories of membership: (1) Full Members, which are governing bodies for cricket of a country recognised by the ICC, or nations associated for cricket purposes, or a geographical area (of which there are 12), and (2) Associate Members, which are the governing bodies for cricket of a country recognised by the ICC, or countries associated for cricket purposes, or a geographical area, which does not qualify as a Full Member, but where cricket is firmly established and organised.

[2] The Tribunal will in this Award identify the ECB with the ICC, which in fact sent the various communications to Mr Samuels see also fn 3 below.

2. Outline Procedural Chronology

2.1 On 21 September 2021 the Charge letter was issued.

2.2 On 4 October 2021 Mr Samuels[3] sent his Response denying the charges, raising issues of jurisdiction and fairness, and requesting that the matter be determined by an Anti-Corruption Tribunal.

2.3 On.18 October 2021 the parties were advised of the appointment of the Tribunal (Michael Beloff KC[4] as Chair, Justice Kate O'Regan and Harish Salve KC).

2.4 On 14 January 2022 the ECB filed its opening brief.

2.5 On 11 March 2022 Mr Samuels filed his Answer, inter alia, seeking dismissal of the charges on what were termed jurisdictional grounds.

2.6 On 4 April 2022, the ECB filed its Reply Brief in which, inter alia, it disputed the validity of the jurisdictional challenge.

2.7 On 25 October 2022 a remote hearing confined to the jurisdictional issues was held before the Tribunal.

2.8 On 7 November 2022 the Tribunal handed down a decision[5] in which it held that Mr Samuels was subject to the provisions of the Code even though he did not compete in the 2019 T10 event because he had played for the West Indies within two years of the date of the events that gave rise to these charges, and that accordingly it did have jurisdiction to determine the charges and gave directions as to the next stage of the proceedings to be concerned with the merits[6].

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3 The Tribunal will in this Award identify Mr Samuels with his Leading Counsel Ian Wilkinson KC, who in fact had carriage of the argument both written and oral on his behalf.

4 Both KCs were then QCs.

5 The decision should be read together with this Award in so far as it contains further detail to this sub-para and the above

6 In his Supplementary Answer Mr Samuels sought to resurrect the jurisdiction issue as follows:

"FURTHER SUBMISSIONS ON "THE PARTICIPANT ISSUE" NEED FOR INFORMED CONSENT

It is to be noted *ab initio* that these further submissions on this point are not a collateral attack on the Tribunal's said award or decision but are made on entirely new and different bases than the points previously considered by the Tribunal.

Notwithstanding the definition of participant in the ECB Code and the above-mentioned decision of the Tribunal, the Respondent maintains, for the record, that he was not (actually) a participant in the said ECB T10 League.

Having regard to the serious nature of the responsibilities imposed on participants and the draconian penalties under the said ECB code, it is submitted, respectfully, that the established facts of the Respondent not being contracted to any team in the said league or actually playing in the league are important matters for the Tribunal's consideration. This is especially so having regard to the

2.9 On 28 November 2022 Mr Samuels filed his Supplementary Brief.

2.10 On19 December 2022 the ECB filed its Supplementary Answer.

2.11 On 6 May 2023 the Tribunal was informed that Mr Samuels would not be giving evidence in the oral proceedings or calling any witnesses on his behalf.

2.12 On 12 May 2023 a remote hearing on the merits was held where the Tribunal heard evidence on behalf of the ECB from [*Witness 1*], and [*ACU 1*] and submissions on behalf of the ECB from Kendrah Potts of Counsel, assisted by Sally Clark, solicitor, Senior Legal Counsel for the ICC, and from Ian Wilkinson KC on behalf of Mr Samuels, assisted by Lenroy Stewart of Junior Counsel and Daniel Beckford, pupil barrister.

2.13 No objection was taken at any time to the constitution of the Tribunal; and both parties agreed at the conclusion of the hearing that their right to be heard had been fully respected and that the hearing had been conducted fairly.

3. The Charges

3.1 The Charges against Mr Samuels were set out in the Notice of Charges as follows:

Offences

First charge - breach of Code Article 2.4.2, in that you failed to disclose to the Designated Anti-Corruption Official the receipt of a gift/hospitality (namely a trip to Dubai, UAE in September 2019) which was given in circumstances that could bring you or the sport of cricket into disrepute.

Second charge – (further, or in the alternative to Charge No. 1) breach of Code Article 2.4.3, in that you failed to disclose to the Designated Anti-Corruption Official receipt of hospitality (namely a trip to Dubai, UAE in September 2019) with a value of US$750 or more.

Third charge – breaches of Code Article 2.4.6 in that you failed to cooperate with the Designated Anti-Corruption Official's investigation…

Fourth charge – (further, or in the alternative to, the third charges) breaches of Code Article 2.4.7 in that you obstructed and/or delayed the ACU's investigation

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absence of corroborative evidence to support the allegations and/or charges against the Respondent."

The Tribunal rejects the Further Submissions. First, the jurisdiction issue is res judicata. Any challenge to the Tribunals decision can only be made on appeal. Second (without prejudice to that) the submission appears to be an attempt to read down, in effect to rewrite, the definition of Participant in the Code which is impermissible in the absence of an overriding law (which there is no attempt even to identify) compelling such an interpretation.

by concealing information that may have been relevant to the ACU's investigation ……

3.2 It was common ground that the Code, vis a vis the Charges, provided, so far as material, as follows:

First Charge: Code Article 2.4.2 makes the following an offence: "Failing to disclose to the Designated Anti-Corruption Official (without unnecessary delay) the receipt of any gift, payment, hospitality or other benefit, (a) that the Participant knew or should have known was given to him/her to procure (directly or indirectly) any breach of this Anti-Corruption Code, or (b) that was made or given in circumstances that could bring the Participant or the sport of cricket into disrepute."

Second Charge: Code Article 2.4.3 makes the following an offence: "Failing to disclose to the Designated Anti-Corruption Official (without unnecessary delay) all gifts (whether monetary or otherwise), hospitality and/or other non-contractual benefits offered to a Participant that have a value of US$750 (AED 2,750) or more, whether or not the circumstances set out in Article 2.4.2 are present, save that there shall be no obligation to disclose any (i) personal gifts, hospitality and/or other non-contractual benefits offered by or on behalf of any close friend or relative of the Participant, (ii) any food or beverage, or (iii) cricket hospitality gifts in connection with Matches the Participant is participating in."

(''the substantive charges'')

Third Charge: 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 Designated Anti-Corruption Official in relation to possible Corrupt Conduct under this Anti-Corruption Code (by any Participant), including (without limitation) failing to provide accurately and completely any information and/or documentation requested by the Designated Anti-Corruption Official (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) as part of such investigation."

Fourth Charge: Code Article 2.4.7 makes the following an offence: "Obstructing or delaying any investigation that may be carried out by the Designated Anti-Corruption Official in relation to possible Corrupt Conduct under this 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 this Anti-Corruption Code."

(''the procedural charges'')

3.3 The key contest between the parties turned not on the meaning of those relevant articles of the Code but rather on whether the facts relied on by the ECB established the charges to the relevant standard.

3.4 The ACU alleges that the offence under Article 2.4.2 relates to condition (b), not (a). Accordingly, the issue as to whether the word 'or' is used in an inclusive, or an exclusive sense[7] does not arise in this case and the Tribunal, in the absence of any argument on it, prefers to express no view on this issue.

4. Burden and Standard of Proof

4.1 On the approach to be adopted by the Tribunal, the Code provides, so far as material, as follows:

ARTICLE 3 STANDARD OF PROOF AND EVIDENCE

3.1 "…., the burden of proof shall be on the ECB in all cases brought under this *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.

3.2 The following rules of proof shall be applicable at hearings and in the proceedings generally:

3.2.1 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.

3.2.2 …..

3.2.3 The *Anti-Corruption Tribunal* may draw an inference adverse to the *Participant* who is asserted to have committed an offence under this *Anti-Corruption Code* based on his/her failure or refusal, without compelling justification, after a request made in a reasonable time in advance of any hearing, to appear at the hearing (either in person or by video or telephone link, as directed by the *Anti-Corruption Tribunal*) and to answer any relevant questions.

4.2 The Tribunal will address the implications of these governing provisions when it comes to consider the detail of the Charges.

[7] Bennion Statutory Interpretation 8th ed para 17.11 The words 'or' and 'and' can be used in different senses and this can occasionally give rise to difficulty where it is not clear from the context what sense is intended: (a) the word 'or' is **normally** used in an inclusive (so that 'A or B' means A or B or both), although it can also be used in an exclusive sense (so that 'A or B' means A or B but not both)

5. Threshold Matters

5.1 Mr Samuels confirmed in his oral submissions that he adhered to all the points made in his written pleadings, whether or not he had repeated or embellished them at the hearing.

5.2 A common theme which ran through submissions made on behalf of Mr Samuels was that the disciplinary proceedings to which Mr Samuels was subject should be equated to a criminal trial.

5.3. The Tribunal cannot accept such an equation. These are not criminal proceedings, to which criminal sanctions attach. They are disciplinary proceedings under the Code and the guarantees that ordinarily attach to criminal trials are not applicable to them.[8]

5.4 The Tribunal will revert to and elaborate on this general point as and when it considers the individual Charges.

6. The facts

6.1 The key facts on which the ECB rely were set out in the Notice of Charge as quoted below.

6.1.1 "Prior to the start of the 2019 T10, the ACU became aware that a number of approaches had been made to players and agents by a man calling himself 'Rehan Ali'. These approaches were said to include an offer to go to Dubai for a few days in order to meet team owners from the T10. The ACU's investigations revealed that Rehan Ali was actually an individual named Mehar Chhayakar who was known to the ACU as someone involved in corruption.

6.1.2 The ACU's investigations suggested that Ali had interests in two teams in the T10 and he was offering players the possibility of playing for one of the teams, in exchange for which he would take 10% of the player's fee. The ACU understands that Ali also told players that they would have the opportunity to earn 'extra money' during the event, considered to be a euphemism for corruption.

6.1.3 Prior to the start of the T10 tournament, the ACU also became aware that one of the team owners of [*Team A*], [*Mr X*], was under investigation in [*redacted*] for potential corrupt conduct at a domestic tournament in [*redacted*]. The ACU also became aware that [*Mr X*] appeared to have been pushing for the team to pick you in the T10 draft (including mentioning that there was a US$ 200,000

[8] See *Jérôme Valcke v FIFA*, CAS 2017/1/5003, para 263, where it was held that: "… *the guarantees in a criminal trial are inapplicable per se in a disciplinary proceeding before the CAS, since FIFA is a private entity and the sanction imposed on the Appellant is based purely on private (Swiss association) law."*

sponsorship linked with your name), despite other members of team staff not favouring your pick as you had not played professionally for some time.

6.1.4 You were duly picked for [*Team A*] at the T10 draft and were due to join the team just prior to the start of the tournament. However, at the last minute you did not travel and your place in the team was given to another player.

6.1.5 In January 2020, representatives of the ACU travelled to Jamaica in order to interview you about an investigation they were conducting (in the capacity of the DACO for the 2019 T10 event) and to serve a Demand on you requiring you, among other things, to hand over your mobile devices for download and to produce certain documentation which may be relevant to the investigation.

6.1.6 As such, on 7 January 2020, [*ACU 1*] and [*ACU 2*] from the ACU travelled to your home address, accompanied by [*Witness 1*]. When they arrived at your property, [*Witness 1*] called you on [*redacted*][9] in order to speak to you to gain access to your property.

6.1.7 The ACU representatives told you that you were required to attend an interview with them under the Code in relation to an investigation that was being conducted into the T10 2019. You were also told that the ACU GM (acting as the DACO) had issued a Demand for you to hand over your mobile devices to allow the ACU to download them and to provide various documentation to the ACU, including itemized phone billing records from 1 May 2019 to 7 January 2020.

6.1.8 It was explained to you that the ACU needed to protect the integrity of your mobile devices and therefore you needed to surrender them to the ACU representatives immediately, and a failure to do so could amount to a breach of the Code.

6.1.9 You then agreed to discuss the matter with [*Witness 1*] and allowed [*Witness 1*] to accompany you inside your house (you did not permit [*ACU 1*] or [*ACU 2*] to follow).

6.1.10 Once inside your house, [*Witness 1*] was able to serve the Demand on you, at the same time reiterating the importance of complying with the Demand. However, you then went upstairs for a period of 10 minutes, without permitting [*Witness 1*] to accompany you, scrolling through your mobile device at the same time.

6.1.11 When you returned downstairs you handed over three mobile devices to [*Witness 1*] in response to the Demand (a phone with a green case, a Gold Samsung and a Gold Galaxy 7 Edge), all of which you put into airplane mode. You also confirmed that you would

[9] Number redacted by the Tribunal for GDPR related reasons but ending in the four digits retained.

attend an interview with the ACU representatives at the Pegasus Hotel, but you would need to confirm the time after having spoken to your lawyer.

6.1.12 The ACU team then returned to the Pegasus Hotel to wait for confirmation of the time of the interview. About 20 minutes after they returned to the hotel, the ACU team noticed that one of your phone numbers (being the number that [*Witness 1*] had contacted you on that morning to alert you to the team's presence outside your house ending [*redacted*]) was still listed as being online on WhatsApp.

6.1.13 Later that day, you attended the Pegasus Hotel for the interview, although you refused to allow the ACU representatives to video record the interview, only allowing audio recorders to be used. At the start of this interview, you asked how long the interview was likely to take because you had to pick up your son from school and having handed your mobile phones over to the ACU earlier that day, you had no way of communicating with the school (which was not true as you had retained one of your mobile phones). You were informed that your lawyer could not be present at the interview as she was a person of interest in the investigation.

6.1.14 The initial interview on 7 January was paused to allow you to obtain the services of a new lawyer. A second interview was therefore reconvened on 9 January 2020, in the presence of your new lawyer. Again you refused to allow the interview to be video recorded, but did allow audio recorders to be used.

6.1.15 In this interview, you were asked a number of questions about a trip you had taken to Dubai in September 2019 (when you had posted some photographs of your trip on your Instagram account). You were also asked a number of questions about the T10. You repeatedly responded by either refusing to answer the question at all, refusing to provide any details in response to the questions, or saying you could not remember any of those details, including in particular in relation to:

- Dinesh Talwar
- 'Rehan Ali'
- Your lawyer (who had travelled with you to Dubai in September 2019);
- The details of who organized and/or paid for your trip to Dubai in September 2019, who travelled with you, your travel and hotel arrangements;
- The 2019 T10 draft, how you were contacted about it, and who arranged your flights for the tournament;
- The name of the hotel you stayed in in Dubai in September 2019;
- [*Mr X*] (who you stated that you did not know);

- Mehar Chhayakar (in respect of whom you stated that you did not recognize anyone by that name).

This is so despite being cautioned at the start of the interview that you were required to provide truthful, accurate and complete answers to any questions and to provide all information requested. Further, you were cautioned that if you refused or failed to answer any questions, the Tribunal may draw an adverse inference against you.

6.1.16 You eventually stated, having consulted privately with your lawyer, that you had travelled to the UAE a couple of months prior for a cologne launch, which trip included a radio interview to promote the brand. However, you still refused to provide the details requested in respect of the trip when questioned by the ACU.

6.1.17 At the end of the interview, you were asked which of the three mobile devices you had surrendered was associated with your phone number ending [*redacted*]. After a brief break to allow you to consult with your lawyer, you admitted that you had not surrendered the phone associated with your [*redacted*] number (which was the number used to call you when the ACU representatives attended your house), effectively admitting that you had not handed over that device.

6.1.18 At the end of this interview, your lawyer confirmed that the outstanding phone would be delivered to the ACU representatives the following morning.

6.1.19 On 12 January, a meeting was arranged between you and the ACU representatives where the three mobile devices you had handed over were returned to you. It was also understood that you would surrender the [*redacted*] phone during this meeting but that did not happen.

6.1.20 At this meeting, you were asked to re-sign the Participant's Consent and Agreement Form to the Use of Cellphone Data Extraction Equipment (which you had signed when you handed over your three devices on 7 January) to acknowledge receipt of the three devices that were being returned to you. You asked for a few minutes to do so, picked up the form and walked out of the room. You did not return and you did not return the signed Consent and Agreement form.

6.1.21 During this meeting, you complained to the ACU about the ACU not doing enough to stop "*shady people*" buying teams and running leagues, because those people would then contact players, creating problems for the players, and then suggesting that this could lead to the entrapment of players.

6.1.22 Despite a number of attempts made via your lawyer in the subsequent days, and later directly with you, the [*redacted*] phone has not been surrendered to the ACU. You therefore failed to surrender all of your mobile devices to the ACU.

6.1.23 The Demand letter that you were issued with on 7 January 2020, as well as requiring you to surrender all of your mobile devices, also required you to provide various documentation to the ACU which was considered to be relevant to the investigation including, without limitation, your phone billing records and bank statements. To date, while you have provided some of the requested documentation, none of the telephone billing records have been provided to the ACU despite indications at various points by you and/or your lawyers that these were being sought from the phone companies.

6.1.24 On 23 January 2020 you were sent a further Demand, via your then lawyer, in which you were asked a number of detailed questions about your trip to Dubai in September 2019, and were specifically requested to return the Consent and Agreement Form you had taken during the meeting on 12 January.

6.1.25 While responses were received to this further Demand on 2 March 2020, the responses were limited and were not full and complete answers.

6.1.26 As part of its investigation, the ACU made enquiries with 1016 FM, the radio station in Dubai you appeared on in September 2019. From these enquiries, the ACU determined that the interview had been arranged by Mehar Chhayakar, an individual known to be involved in corrupting cricket. In your 2 March responses, you said that you had been invited to Dubai by one of the team owners, via his assistant, with bookings being sent by WhatsApp, however you were no longer able to provide any further details. In these written responses, you also stated that the interview with the Dubai radio station was arranged by the team through the team's assistant manager. As such, it is inferred that you did know Chhayakar (a known corrupter) and he was the one who you were in contact with to arrange the trip to Dubai and the radio interview.

6.1.27 On 28 July 2020, in a letter sent to your lawyer, Dr Crowne, you were requested to sign a consent letter to enable the ACU to make enquiries at the Al Habtoor City Hotel in Dubai to identify how the bill for your stay there in September 2019 was paid. The ACU made it clear that information around who paid for your trip to Dubai was relevant to the investigation and thus this request formed part of a Demand under Code Article 4.3. You failed to sign the consent letter and return it to the ACU and, as such, the ACU has not been able to obtain this information. A further demand was issued in this respect on 25 August 2020 which you also failed to respond to or comply with."

6.2 The Notice of Charge also stated that the ACU asserted "these facts primarily in reliance on the statements and admissions made by you in your interviews with the ACU, together with your conduct in the course of the ACU's investigation, as well as information provided by other Participants as part of the ACU's investigations."[10]

6.3 There was little challenge to these facts. The main disputes between the parties related to the inferences to be drawn from the facts or their sufficiency to make good the charges to the relevant standard i.e. of comfortable satisfaction. This was not, in the Tribunal's view, particularly surprising given the reliance the ECB placed on Mr Samuels' own statements in recorded interviews (whose authenticity he did not challenge) and his later decision neither to give evidence himself or to call any witnesses at the hearing.[11] This decision on any view exposed Mr Samuels at the very least to the risk that the Tribunal might in consequence exercise its discretion under the Code Article 3.2.3.to make findings adverse to him.[12] It also deprived Mr Samuels of the opportunity to challenge those findings by contrary evidence (which his Counsel could not himself provide even on instructions).

6.4 Mr Samuels rather sought by way of cross examination of the ACU witnesses to extract answers which contextualised some of Mr Samuels' actions of which complaint was made e.g. his failure promptly to hand over his mobile phone with the number ending in the digits [*redacted*] ('the [*redacted*] phone') at the first interview.

6.5 Mr Samuels additionally submitted that ''the principles of natural justice and fairness were breached by the ACU in the manner in which it investigated the matter". Mr Samuels' arguments in this respect were not fully set out in his Answer but were presented orally at the hearing on 12 May 2023.

6.6 This submission, as developed, had four main elements:

1. The ACU's unannounced visit to Mr Samuels' house on 7 January 2020 to serve the demand letter and to demand that he hand over his mobile devices; (I)

2. The failure by the ACU to issue the necessary cautions; (II)

3. The ACU's denial of Mr Samuels' right to counsel of his choice; (III) and

4. The behaviour of the ACU interviewers, especially that of [*ACU 1*], during the interview of Mr Samuels, which was said to be ''intrusive, callous'' as well as ''unlawful.'' (IV)

The Tribunal will examine each element in turn.

[10] This paragraph is a direct quotation from the Notice of Charge as are all the sub paragraphs in 6.1.
[11] See 2.12 above
[12] How it chose to exercise that power is dealt with in the section on Merits below.

6.7 (I). The ACU's Unannounced Visit to Mr Samuels' Home on 7 January 2020

Article 4 of the Code provides, so far as material, as follows:

ARTICLE 4 INVESTIGATIONS AND NOTICE OF CHARGE [13]

4.1 Any allegation or suspicion of a breach of this *Anti-Corruption Code*, whatever the source, shall be referred to the *Designated Anti-Corruption Official* for investigation.

4.2 The *Designated Anti-Corruption Official* may, at any time, conduct an investigation into the activities of any *Participant* who he/she believes may have committed an offence under this *Anti-Corruption Code*. Such investigations may be conducted in conjunction with, and information obtained in such investigations may be shared with, the ICC and/or other *National Cricket Federations* and/or other relevant authorities (including criminal justice, administrative, professional and/or judicial authorities). **All *Participants* must cooperate fully with such investigations, failing which any such *Participant* shall be liable to be charged with a breach of the *Anti-Corruption Code* pursuant to Articles 2.4.6, 2.4.7, 2.4.8 and/or 2.4.9 (and it shall not be a valid basis for failing or refusing to cooperate or a valid defence to any such subsequent charge for a *Participant* to invoke any privilege against self-incrimination, which privilege is deemed to have been waived by the *Participant*).** The *Designated Anti-Corruption Official* shall have discretion, where he/she deems appropriate, to stay his/her own investigation pending the outcome of investigations being conducted by the ICC and/or other *National Cricket Federations* and/or other relevant authorities.

4.3 As part of any investigation, the *Designated Anti-Corruption Official* may at any time (including after a *Notice of Charge* has been provided to a relevant *Participant*) make a written demand to any *Participant* (a "**Demand**") to provide the *Designated Anti-Corruption Official* , in writing and/or by answering questions in person at an interview and/or by allowing the *Designated Anti-Corruption Official* to take possession of and/or copy or download information from his/her *Mobile Device(s)* (as the *Designated Anti-Corruption Official* elects), with any information that the *Designated Anti-Corruption Official* reasonably believes may be relevant to the investigation. Such information may include (without limitation) (a) copies or access to all relevant records (such as current or historic telephone records, bank statements, Internet services records and/or other records stored on computer hard drives or other information storage equipment or any consent forms relating thereto); (b) any data and/or messages and/or photographs and/or videos and/or audio files and/or documents or any other relevant material contained on his/her *Mobile Device(s)* (including, but not limited to, information stored through SMS, WhatsApp or any other messaging system); and/or (c) all of the facts and circumstances of which the *Participant* is aware with respect to the matter being investigated. Provided that any such Demand has been issued in accordance with this Article 4.3, and subject to any principles of national law, the *Participant* shall cooperate fully with such *Demand*, including

[13] The emphasis throughout is that of the Tribunal.

by furnishing such information within such reasonable period of time as may be determined by the *Designated Anti-Corruption Official.* **Where such a *Demand* relates to the request to take possession of and/or copy or download information contained on a *Participant's Mobile Device(s)*, then such information shall be provided immediately upon the *Participant's* receipt of the *Demand*.** In all other cases, save where exceptional circumstances exist, a minimum period of fourteen from receipt of the *Demand* will be provided. Where appropriate, the *Participant* may seek an extension of such deadline by providing the *Designated Anti-Corruption Official* with cogent reasons to support an extension, provided that the decision to grant or deny such extension shall be at the discretion of the *Designated Anti-Corruption Official*, acting reasonably at all times.

4.4 Any information furnished to the *Designated Anti-Corruption Official* (whether pursuant to a specific *Demand* or otherwise as part of an investigation) will not be used for any purpose other than in accordance with this *Anti-Corruption Code* and will be kept strictly confidential except when:

4.4.1 it becomes necessary to disclose such information in support of a charge of an offence under this *Anti-Corruption Code* or the anti-corruption rules of the *ICC* or any other *National Cricket Federation*;

4.4.2 such information is required to be disclosed by any applicable law;

4.4.3 such information is already published or a matter of public record, readily acquired by an interested member of the public, or disclosed according to the rules and regulations governing the relevant *Match*; and/or

4.4.4 it becomes necessary (because the information gathered may also amount to or evidence infringements of other applicable laws or regulations) to disclose such information to other competent authorities -- including the *ICC*, other *National Cricket Federations* and/or any applicable police, taxation, fraud, criminal intelligence or other authorities -- whether pursuant to formal information-sharing agreements or otherwise)"

6.8 The Tribunal notes that not only is there no requirement in the Code for prior announcement of a DACO's visit but rather that the express requirement for immediate provision of the electronic data and/or mobile devices on demand is inconsistent with advance warning of such demand. It is self-evident that the giving of such warning would defeat the object of the exercise which is to ensure that no opportunity is given to the person to whom such a demand is made to delete or otherwise interfere with the data before it is provided. The nature of the investigation is such that advance notice of a visit may not only enable the person under investigation to remove digital and non-digital evidence in his possession but may also enable interfering with witnesses and tampering with evidence that may be sourced from others.

6.9 In his Answer Brief, Mr Samuels complained nonetheless under this heading of the violation of his claimed right to privacy both as regards the unannounced

visit[14] and the demand letters. This raised a preliminary issue as to the legal source of such claimed right in the context in which Mr Samuels sought to deploy it.

6.10 Mr Samuels argues for the application of English law and specifically the provisions of Article 8 of Schedule 1 Part of 1 the Human Rights Act 1998 (''HRA'') which provides that "Everyone has the right to respect for his private and family life, his home and his correspondence''.

6.11 In the Tribunal's view there are numerous insuperable obstacles in the path of such argument, but it need cite only two:

(1) The Code and its application in these proceedings are governed by the law of the UAE applicable in Abu Dhabi (Article 11.5) and not by English law. including the HRA (in so far as incorporating the European Convention on Human Rights). Thus the ECHR has no application.

(2) Mr Samuels did not seek to establish and the Tribunal cannot assume, in his favour, that UAE law contains an absolute right to privacy and further that any limitation of such right could not be justified. A right to privacy is not usually absolute. and limitations upon such right can be justified in appropriate circumstances and are not therefore an infringement of the right[15].

6.12 The Tribunal notes that the argument that a person bound by the Code may, on the basis of an asserted right to privacy, refuse to provide or divulge information sought by the ACU pursuant to a Demand has been raised – and rejected – in previous cases under the ICC Code (an antecedent of the Code).[16] While there is no doctrine of precedent that compels this Tribunal to follow earlier jurisprudence, this Tribunal finds the facts in the earlier cases to be analogous to those in the present case and the reasoning to be compelling.

6.13 The Tribunal bears in mind that Article 1.5.8 provides that each Participant, who is automatically bound by the Code, is "deemed to have agreed…to waive and forfeit any rights, defences and privileges provided by any law in any jurisdiction to withhold, or reject the provision of, information requested by the ACU General Manager in a Demand ("'the Waiver''). The Tribunal notes that

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[14] In point of fact as to Mr Samuels' complaint that the ICC's visit itself was "*unannounced*" and "*uninvited*" (Answer Brief [at 54]): Mr Samuels permitted the ICC investigators to enter the grounds of his property if not his actual house) and Mr Samuels permitted [*Witness 1*] to enter his house accompanied by him. In any event for reasons already explained at 6.3. it is likewise necessary for, *inter alia*, requests to download mobile phones to be unannounced, otherwise, it would enable players to delete content from their phone or simply to 'lose' their mobile.

[15] Mr Samuels himself cited- International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation (ARAF) & Mariya Savinova-Farnosova CAS 2016/O/4481, where the Sole Arbitrator at 106ff held that'' *the interest in discerning the truth must prevail over the interest of the Athlete that the covert recordings are not used against her in the present* proceedings''. In: *ICC v Ansari (20 February 2019)("Ansari")*, the Tribunal stated to the same effect at 6.12] *(ii) As a matter of general law, common to many democratic jurisdictions, the right to privacy is not absolute and must yield to more potent public interests such as the suppression of crime or other cognate misconduct".*

[16] See Ansari at 6.12 and ICC v Ikope', (6 March 2019) at 6.21, 6.22.

Mr Samuels did not seek to argue that the Waiver was ineffective under the law of the UAE or otherwise[17] However given its conclusion in para 6.11 above, it does not need to consider whether this is also an insuperable obstacle.

6.14 The Tribunal notes that the conduct of investigations under the Code are, of course, subject to the overarching principles of fairness. The procedures prescribed in the Code for investigations enquiry are not inconsistent with the principles of natural justice and are not facially oppressive or unduly invasive, and the Tribunal concludes that they do not offend the general principle of fairness.

6.15 The Tribunal observes that Article 4.4 of the Code makes clear that information which is disclosed by a participant will not be used for any purpose other than those provided for in the Code. The ICC's Standard Operating Procedure, in so far as here applicable, contains a similar provision that was considered by the ICC Tribunal in *Ansari w*here, the Tribunal held, at 6.12, that the SOP "…has clearly been vetted by lawyers who are expert in human rights [and], requires downloaded material to be treated with sensitivity; the ACU will only search for material indicative of a breach of the Code. It has no concern with other matters and could not, even were it to wish to do so, make use of them by publication or otherwise."[18]

6.16 As was said in *Ikope* at 6.21: *"There is no absolute 'right' to participate in elite-level cricket. Those who want to do so, as part of a profession, have to submit to rules that are necessary to protect the integrity of the sport, even if those rules limit their rights, inter alia, to privacy."*

6.17 Mr Samuels asserts, without sufficient particulars, that there would have been alternative means of obtaining the information sought by the ACU, presumably under the law of Jamaica[19]. However, he does not contend that such an enquiry is contrary to the law of Jamaica.

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[17] Nor did Counsel in analogous circumstances in Ikope para 6.23(c) with reference to the law of Zimbabwe.

[18] More particularly the Code's provisions regulating the downloading of the contents of a Participant's mobile devices are designed to ensure that the power to download is only used in a manner that is valid and proportionate, and that safeguards the privacy of the Participant concerned, as it is acknowledged that there will be private information contained on a person's Mobile Device. The SOP specifies, at paragraph 3.1, that the ACU may only utilise this power if prior authorisation has been granted by the ACU General Manager (as was the case here), who should only grant such authorisation where he is satisfied that "*the use of the Equipment is proportionate, legal, necessary and that there is accountability in the process.*" In addition, paragraph 4.2 of the SOP provides that data will only be downloaded where either "*(a) the ACU has reasonable grounds to suspect that the Participant in question has committed an offence under the Code, or (b) where the ACU has reasonable grounds to believe that there may be information contained on any Mobile Device in the possession of any Participant ... which may be of relevance to the investigation.*"

[19] Verbatim: 'These extreme requests cannot be deemed justifiable or proportional in an effort to discern the truth as the ICC had several other methods available to investigate the allegations in this matter without infringing on the Respondent's privacy. The ACU had conducted several interviews and corresponded with several persons in relation to their investigation of this instant matter. It was

6.18 Even if it is correct that the ACU could have relied upon Jamaican law to obtain the information, something which the Tribunal does not know, in the view of the Tribunal such reliance might well result in unequal treatment of participants. The international nature of the sport of cricket governed by the Code [20] would mean that reliance on national law to seek information as part of an investigation would result in unequal treatment of otherwise similarly placed Participants (as it would depend on the relevant law governing the Participants). Moreover, reliance on domestic law would inevitably give rise to logistical problems and increase expense for the relevant DACO. In addition, even where national law creates a machinery for obtaining information, it would be in aid of, and not in derogation of the provisions of the Code. It is for this reason that previous Tribunals have consistently recognised that it is proportionate to include the right to demand such information from participants, and a concurrent duty on participants under the governing bodies rules to cooperate with such demand.[21]

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not justifiable or proportionate to demand highly personal and confidential information from the Respondent. Furthermore, if the ICC required these details or information from the Respondent there existed proper and legal methods under which such demands could have been made. The three (3) demand letters from the ICC do not constitute a proper and legal method for conducting a search.''

[20] It is axiomatic that 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 organized sport, are the integrity and equal opportunity of sporting competition guaranteed*" (*Galatassary SK v Ribery et al CAS 2006/A/1180, para 7.9*).). As CAS has explained, the purpose of a governing law provision in an IFs' rules is to "*ensure the uniform interpretation of the standards of the sport worldwide*" (*Valcke v FIFA CAS 2017/A/5003, para 147*). Moreover, for the same reason, the rules have to be given a uniform and consistent meaning and legal effect across the globe. (*Panarol v Bueno Rodriguez & PSG, para 24, CAS 2005/A/983 & 984.* It is to be noted in this context that under the ICC Constitution Article 2.4 Members must, inter alia "(F) adopt, implement and enforce within its Cricket Playing Country a set of regulations (including anti-doping and **anti-corruption regulations**) that are consistent with the Memorandum of Association, these Articles of Association, each Members' Resolution that is passed, and the Regulations"; Furthermore, under the Criteria for Membership para 2.2 ''To be considered eligible for membership as an Associate Member of the ICC, the Applicant must satisfy the following criteria: (a) General (……. (b) Governance, administration and finance (i) Have in place a detailed governance system that: (i) is fit for purpose; (ii) includes, as a minimum (a) a detailed written constitution containing provisions covering membership, AGMs and voting rights, and (b) adequate integrity related rules and regulations **covering anti-corruption**, anti-doping and ethics; and (iii) is consistently applied;''

[21] See, for example, the decision of the ICC Tribunal in Ikope at *6.22: "Moreover, an international sports federation has to fight the insidious threat of match fixing without the coercive powers of the state to assist it in investigating and uncovering corrupt conduct. That justifies imposing a positive obligation on participants to cooperate with investigations investigators can examine it for any potential evidence. None of the participant's rights, whether a constitutional right to privacy or otherwise, are breached thereby.*" See also to like effect *Valcke v FIFA CAS 2017/A/5003* at 265: "
Sports governing bodies do not have the same legal tools available to state authorities. Sports governing bodies must thus be permitted to establish rules in their ethical and disciplinary regulations that oblige those that are subject to those regulations – either witnesses or parties – to cooperate in investigations and proceedings and that provide sanctions for those who fail to do so. … Since – differently from criminal law – the Appellant has voluntarily submitted to the rules and regulations of FIFA and considering that, unlike public authorities, sports governing bodies have limited investigative powers, compulsory cooperation for fact-finding is in principle permissible. Establishing and applying such rules is, in principle, essential to maintaining the image and integrity of sports.

6.19 (II): The Absence of Cautions

It was argued on behalf of Mr Samuels that he was not properly cautioned by the ACU representatives either when the ACU visited his home on 7 January 2020 or at the interviews with him that followed and that the absence of cautions constituted a material unfairness. In this regard, the Tribunal notes that:

(i) The demand letter of 7 January 2020 which was given to Mr Samuels on the morning of the visit to his home clearly warned Mr Samuels of the consequence of any refusal to comply with the demands i.e. a risk of prosecution for Article 2.4.6 or Article 2.4.7 offences. It also acknowledged that Mr Samuels may wish to take independent legal advice.

(ii) At the start of the 2nd stage interview on 7 January 2020 a caution was given by [*ACU 1*] in the following terms: "If you refuse or fail to answer any questions, a tribunal may draw an adverse inference against you. This means that the tribunal may conclude that any answers you would have given would incriminate you. If you are charged with an offence under this code, it may harm your defence if you do not mention now something which you later rely on before a tribunal. That is a cricket tribunal. Do you understand the caution? Should I explain it to you?"(nothing of any materiality having been said by Mr Samuels at the first brief stage)

(iii) A similar caution was provided at the start of the interview on 9 January 2020.

(iv) On both occasions when Mr Samuels was provided with a caution, Mr Samuels acknowledged that he understood the caution.

In the circumstances, the Tribunal is satisfied that Mr Samuels was appropriately cautioned by the ACU on all the relevant occasions.

6.20 (III). Denial of Mr Samuels' Entitlement to Counsel of his Choice

It was argued at the hearing that the ACU denied him access to counsel of his choice. This argument, which does not raise a pure question of law, was only advanced in closing. It did not, for example, feature in the written response to the notice of charges. The manner in which it was raised was unsatisfactory, but having considered the argument on its merits the Tribunal finds that it lacks substance. It appeared to be based on two complaints. The first relates to the

For this reason, there is no contradiction in the FCE placing the burden of proving an infringement on FIFA, while imposing on parties an obligation to cooperate in fact-finding, as the Appellant suggests."

fact that Mr Samuels was not given an opportunity to seek legal advice at the time that the ACU officials presented themselves at his home on 7 January and requested that he hand over his mobile phone. The second relates to [*ACU 1]*'s informing Mr Samuels at the interview on 7 January 2020 that he could not be represented in this matter by [*Lawyer 1*] who accompanied him to the interview as his counsel. [*Lawyer 1*] had, according to counsel for Mr Samuels, previously acted as counsel for Mr Samuels.

6.21 With regard to the first complaint, the Tribunal notes that while the right to assistance by Counsel of choice is specifically provided for in the context of a disciplinary hearing under the Code Article 5.1.8 there is no equivalent provision in the Code in respect of the gathering of evidence. The Tribunal notes that article 4.3 of the Code authorises the DACO to demand that a person bound by the Code surrender possession of a mobile device "at any time". In the view of the Tribunal, the reason that the Code requires immediate handover of a mobile device is to prevent the possibility that the device may be tampered with once notice is given that the investigation is under way. and in the view of the Tribunal as noted above, this is a sufficient justification for the rule. Accordingly, the Tribunal has not been persuaded that Mr Samuels should have been given an opportunity to arrange to be represented by counsel before handing over his mobile device.

6.22 With regard to the second complaint, the Tribunal notes the ACU accepted that Mr Samuels was entitled to be represented by counsel at his interview with the ACU. The Tribunal also notes that according to the transcript of the interview, [*ACU 1*] explained that Mr Samuels could not be represented [*Lawyer* 1] because she was "a person of interest" in the investigation. Nevertheless, [*ACU 1*] told Mr Samuels that he was entitled to be represented by counsel and could appoint a different counsel and the interview was postponed to enable Mr Samuels to obtain other counsel. When the interview resumed, Mr Samuels was accompanied by [*Lawyer 2*], another counsel. At that interview, neither Mr Samuels nor [*Lawyer 2*] raised any complaint about this issue.

6.23 The Tribunal notes that it has not been suggested that when [*ACU 1*] stated that [*Lawyer 1*] could not represent Mr Samuels, he was acting in bad faith or that his decision was arbitrary or irrational. Indeed, the Tribunal is of the view that it would not have been in Mr Samuels' interest to be represented at the interview by a lawyer in circumstances where there was a conflict of interest between Mr Samuels and [*Lawyer 1*] or where the interviewer reasonably believed there to have been a conflict.

6.24 In these circumstances, the Tribunal concludes that Mr Samuels has not established that he was denied the right to be represented by counsel of his choice during the investigation of this matter.

6.25 (IV). The Behaviour of [*ACU 1*] during the Interview

It was argued on behalf of Mr Samuels, that [*ACU 1*]'s behaviour during the interview was improper. The Tribunal has read with care the transcript of the

interviews in which Mr Samuels participated. The Tribunal cannot detect that [*ACU 1*] (or [*Witness 1*]) behaved in any way inconsistent with the proper performance of their respective functions under the Code, nor was any passage drawn to its attention which supported such complaint. It was clear from the transcript of the interview that Mr Samuels clearly nurtures a grievance, whether justified or not, about a previous encounter more than a decade ago with the ICC. This sense of grievance may have led him to display some truculence during the interviews, which did not however, in any way affect the professional way in which [*ACU 1*] responded. It is particularly significant, in the Tribunal's view, that Mr Samuels' then lawyer made no protest about [*ACU 1*]'s behaviour, but indeed encouraged Mr Samuels to answer [*ACU 1*]'s questions, when he seemed disinclined to do so. The Tribunal therefore concludes that Mr Samuels has not established this complaint.

7. The Procedural Charges

7.1 Mr Samuels' argued that the ECB had failed to meet the burden and standard of proof imposed upon it by Article.3.1 of the Code in respect of all the charges.

7.2 The Tribunal finds it convenient to deal first with the procedural charges for two reasons (i) because of these there is no dispute as to the facts, which are essentially set out above and Mr Samuel's defence rests entirely on propositions of law, and (ii) because its conclusion on the procedural charges will necessarily affect its conclusion on the substantive charges.

7.3 As to the third charge (breaches of Code Article 2.4.6)*,* the ECB asserts that Mr Samuels failed to cooperate with the DACO's investigation by:

(i) Failing or refusing to provide to the ACU his main mobile device (number ending [*redacted*]), which the ACU had requested in order to download its contents, despite ACU's several requests;

(ii) Failing or refusing to provide any of the billing information for his mobile devices that was requested by way of demands;

(iii) Failing or refusing to answer completely and fully questions put to him by the ACU, both in writing and in interview;[22] and

(iv) Failing or refusing to sign a consent letter which the ACU requested in order to enable the ACU to make enquiries as to how payment was made for his hotel stay in Dubai.

Each of these failures to cooperate was formulated as a separate breach of Article 2.4.6 the evidence in support of which is summarised below.

[22] Mr Samuels provided through his then Counsel on the 1st day of March 2020, responses to the demands dated January 7, 2020 and January 23, 2020. The responses were, however, on their face incomplete.

7.4 Failure to provide the [*redacted*] phone:

(i) In the First Demand, Mr Samuels was required to hand over to the ACU investigators all his mobile devices. Mr Samuels admitted during the interview on 9 January 2020 that he failed to provide his mobile phone with number ending [*redacted*] at the time of the ACU's visit on 7 January 2020. Mr Samuels handed the investigators three mobile phones but withheld the [*redacted*] phone, which must have been in his possession because it was the phone on which he was contacted by [*ACU 1*] that morning.

(ii) Whilst by letter dated 1 March 2020, Mr Samuels' then legal representative, [*redacted*], indicated that Mr Samuels was prepared to make the [*redacted*] phone available to the ACU, this was only on the basis that the ACU returned to Jamaica to take the download from the phone and on condition that it provided 7 days' advance business notice. This offer by Mr Samuel's counsel was inadequate and did not mitigate his failure to provide the phone upon the first demand.

(iii) In the course of cross examination, several questions were asked that appeared to be directed towards creating a defence that the phone was not handed over under compelling circumstances. This kind of approach is inherently unsatisfactory. If Mr Samuel intended to set up a defence of compelling circumstances, he should have articulated this defence in his Answer and himself given evidence of such matters in the hearing.

7.5 Failure to provide billing information:

(i) In the First Demand Mr Samuels was required to provide itemised billing records for each of his mobile devices for the period 1 May 2019 to the date of the Demand (i.e. 7 January 2020).

(ii) The Tribunal notes that Mr Samuels has not provided any telephone records then or at any time, nor provided any explanation for his failure to do so.

7.6 Failure to answer completely and fully questions put to him by the ACU both in interview and subsequently in writing:

(i) In the 9 January 2020 interview, Mr Samuels repeatedly refused to answer questions, provided limited responses to question and claimed he could not remember. Moreover, Mr Samuels made it clear that he did not intend to cooperate fully with the investigation, stating in response to being warned that he could not pick or choose which questions he answered, "*Yes, I can and I will.*" Later in the interview, on being asked whether there were any questions he would answer, Mr Samuels said, "*Don't know.*" [23]

[23] By way of example.

(ii) In the Tribunal's view the questions being put to Mr Samuels in the interview were all legitimate and reasonable questions. Indeed, as already noted, Mr Samuels' lawyer took no objection to them and on occasion actually encouraged him to answer them.

(iii) The Tribunal notes that Mr Samuels was interviewed on 9 January 2020. He was for the most part asked about the trip to Dubai, which had taken place only a few months previously and the Tribunal finds it surprising that he could remember so little about the trip and his recruitment to the T10.

(iv) Mr Samuels was warned on several occasions throughout the interview that if he did not answer the questions fully, he could potentially be charged with a failure to cooperate.

(v) In response to the Second Demand, seeking answers to specific questions about the Dubai Trip, Mr Samuels:

(a) failed to confirm who had paid for and arranged the Dubai Hospitality, stating only that it was by "*the team owner, through his assistant*" (the names of the team, owner and assistant were not provided); and

(b) failed to provide specific details requested, for example

* The class of travel (question 2.1);
* his connection to the person who paid for the flights (question 2.4);
* who was present at the Burj Al Arab (question 2.13);
* who was on the boat trip (question 2.22).

Further, Mr Samuels failed to provide the documentation relating to the various aspects of his trip, as requested in the Second Demand.

7.7 Failure to sign the consent letter to enable the ACU to make enquiries.

(i) Mr Samuels stated he could not remember how he had come to be part of the draft for the T10 and refused to provide details about what happened after he was picked in the draft.
(ii) Mr Samuels stated he could not remember whether he did any other interviews or had any other meetings (in addition to the one identified radio interview) during the Dubai trip.
(iii) Mr Samuels refused to provide the names of the individuals he travelled with on the Dubai trip and refused to confirm who paid for his flights to Dubai or which class he flew in.
(iv) Mr Samuels, when asked specifically if the hotel he stayed at was the Hilton Al Habtoor, stated, "*I don't answer simple questions".*
(v) Mr Samuels refused to answer who he was with at the Burj Al Arab.
(vi) Mr Samuels, in response to being asked who organised the boat trip stated, "*You'll have to find out that*".
(vii) Mr Samuels refused to answer with whom he went to the nightclub.
(viii) Mr Samuels refused to confirm whether he knew an individual by the name Rehan Ali.
(ix) Mr Samuels refused to confirm whether he knew Mr Chhayakar.
(x) Mr Samuels refused to answer questions about his relationship with [*redacted*].

(i) In the Third Demand, the ACU, *inter alia*, asked Mr Samuels to sign a consent form that would enable the ACU to make enquiries of the Hilton Hotel at which Mr Samuels stayed in order to ascertain who paid for Mr Samuels' stay in September 2019.

(ii) Mr Samuels failed to sign the form and thereby, in failing to cooperate with the ACU's investigation, prevented the ACU from furthering its investigations.

7.8 In the light of this evidence the Tribunal concludes that Mr Samuels did fail to cooperate with the ACU in breach of his obligations under the Code as set out in the third charge (relating to breaches of Article 2.4.6. of the Code).

7.9 As to the Fourth Charge – (further or alternatively to the Third Charge) Breach of Code Article 2.4.7, the ECB's case is that, in addition to amounting to a failure to cooperate, Mr Samuels' actions also obstructed and/or delayed the ACU's investigation by concealing information, namely:

- Data on his mobile device ending [*redacted*], on the basis that Mr Samuels refused to hand over his phone to the ACU;
- His phone billing records, which Mr Samuels failed to disclose; and/or
- Details about who arranged and paid for the Dubai Trip and, in particular by failing to sign the consent letter pursuant to the Third Demand, which prevented the ACU from making enquiries directly with the hotel to ascertain who paid for the accommodation.

7.10 The Tribunal repeats mutatis mutandis paragraph 7.8 above.

7.11 Mr Samuels' defense to both these overlapping charges[24] is essentially based on the privilege against self- incrimination to which he claims to be entitled.

7.12 The Tribunal cannot accept the validity of that defense for the following reasons:

(i) In *Valcke* (on which Mr Samuels expressly relied) the CAS panel said at 263: "…, *based on CAS jurisprudence, the Panel observes that the guarantees recognized in a criminal trial are inapplicable per se in a disciplinary proceeding before the CAS, since FIFA is a private entity and the sanction imposed on the Appellant is based purely on private (Swiss association) law."*

The disciplinary charges against Mr Samuels are also based on a Code adopted by a private entity, in this case, the ECB, and accordingly the Valcke reasoning applies here too. In the circumstances, it is not necessary for the Tribunal to address the copious jurisprudence cited

[24] The consequences of any overlap would go, in the Tribunal's view (which appears to be shared by the ECB), to sanction, not to the substance of the charges.

by Mr Samuels on the applicability of the privilege in criminal proceedings since they are not relevant in his case.

(ii) In *Valcke* the Panel continued in the same paragraph: *"The question for the Panel remains, however, whether the privilege of self-incrimination may still be indirectly applicable"* but explained at para 266 the preconditions for such indirect applicability, namely *"if a parallel criminal proceeding is pending or anticipated".*

(iii) While the Tribunal accepts that corrupt conduct under the Code may also in some circumstances constitute a criminal offence[25] there is no evidence before the Tribunal that criminal proceedings against Mr Samuels are anticipated in Abu Dhabi (or anywhere) given that even the substantive charges against him are not of recognizable criminal behaviour. It is not the ECB case that Mr Samuels was ever guilty of spot or match fixing; given that he did not play in the T10 tournament.[26] A criminal investigation has to be based upon evidence gathered in accordance with the law of the State that seeks to investigate and prosecute, and statements made in a private enquiry are not ordinarily used to incriminate the accused in a criminal trial. Mr Wilkinson did not cite any law to establish that any statement actually made to DACO by Mr Samuels would incriminate him in the UAE or Jamaica. It was never suggested how answers to questions about the Dubai trip (for example whether he flew business or economy class, or where he stayed), could conceivably incriminate him, especially given that in the end,as noted above, he did not play in the T10 event.

(iv) Mr Samuels' assertions in respect of relevant criminal investigations are similarly tenuous. Whilst there are media reports that [*Mr X*] was under investigation for potential corruption in cricket, they indicate only that [*Mr X*] was being investigated for offences in relation to the [*redacted*] (not for offences in Abu Dhabi). There is no evidence of any investigation into Mr Samuel's own case in those or any circumstances or one that even indirectly concerns him.

(v) Further and in any event, there is no evidence that Mr Samuels refused to answer questions during the interview by raising the privilege against self-incrimination, nor that his lawyer advised him to do so.

7.13 Mr Samuels raised a further defense, titled Election of Charges. He submitted that the (ECB) ICC should be asked to elect which of the charges it would pursue against him, given that the fourth charge is an alternative to the third. For this purpose, he invoked the well-known legal principle that a person ought

[25] See Article 1.11 of the Code which expressly so provides.

[26] [*ACU 1*]'s quoted caution *"if you refuse or fail to answer any questions, the tribunal may draw an adverse inference against you. This means that the tribunal may conclude that any answers you would give or have given would incriminate you."* clearly refers to incrimination in the pending disciplinary, not in any potential criminal proceedings.

not to be liable to be punished twice or be in jeopardy of being punished twice for conduct arising from the same actions.

7.14 The short answer to this defense is that the ECB have never asserted that it is or could be entitled to punish Mr Samuels twice for conduct arising out of the same actions; and the defense would only become germane if and when sanctions needed to be considered. There is no reason why in the Tribunal's view both the third and fourth charges should not be pursued, especially as, although overlapping, they do not rely on identical facts.

Substantive charges

7.15 The notice of charges contained two substantive charges against Mr Samuels:

- The first alleged a breach of Article 2.4.2, that Mr Samuels' had failed to disclose the receipt of a gift/hospitality (namely a trip to Dubai, UAE in September 2019) which was given in circumstances that could bring Mr Samuels or the sport of cricket into disrepute. (''the First Substantive Charge'')

- The second, in addition or in alternative to the first, alleged a breach of Article 2.4.3 of the Code, in that Mr Samuels failed to disclose receipt of hospitality (namely a trip to Dubai, UAE in September 2019) with a value of US$750 or more. (''the Second Substantive Charge'')

7.16 Mr Samuels again relies on certain threshold points which the Tribunal will examine in turn.

7.17 The first argument was that the charges fell short of the requirements of legal certainty and were therefore not fair. Though not all the case law cited by Mr Samuels under this rubric appears to be strictly relevant, the Tribunal accepts the existence of the principle that charges should be formulated with reasonably certainty, which would be engaged under the ECB Code as it would under the ICC Code.[27]

7.18 Mr Samuels complains that a charge predicated on '*bringing the sport into disrepute*' i.e. the First Substantive Charge contravenes principles of legal certainty because the phrase itself is not defined or certain. The ECB maintains to the contrary that Code Articles 2.4.2 and 2.4.3 do not infringe the principle of legal certainty.

7.19 The Tribunal observes that a rule providing that a participant may be subject to disciplinary charges if they bring the sport into disrepute is now commonly

[27] CAS 2017/A/5086 *Mong Joon Chung* v. *Fédération Internationale de Football Association (FIFA)*, 9 February 2018 at 5: "*For a sanction to be imposed, sports regulations must proscribe the misconduct with which the subject is charged, i.e. nulla poena sine lege (principle of legality), and the rule must be clear and precise, i.e. nulla poena sine lege clara (principle of predictability".*

found in the rules of sport governing bodies ("SGBs").[28] Charges have been successfully brought on numerous occasions by SGBs on the basis of such rules both in cases under English law[29] and before CAS. [30] The Tribunal also notes that international sporting authorities seek to preserve the reputation of their sports for fairness and integrity in the public interest. Any conduct which threatens the reputation of sport in relation to its fairness or integrity is therefore likely to bring the relevant sport into disrepute. Given its widespread use as a regulatory provision, and the reason underpinning it, the Tribunal concludes that there is no inherent uncertainty in Article 2.4.2.

7.20 Furthermore it is obvious that, as the domestic and international jurisprudence recognises SGBs cannot predict every form of improper conduct. No regulation can fully catalogue actions that would fall foul of the standard of conduct expected from an international sportsperson. However, athletes for their part have sufficient protection given that a disciplinary panel must itself be satisfied that the conduct has or could bring the sport or individual into disrepute.

7.21 Under Article 2.4.2,[31] it is necessary for the ECB to prove only that Mr Samuels' conduct '*could'* bring either himself or the sport of cricket into disrepute. However, in the Tribunal's view there is no uncertainty in this provision. Whether conduct in fact could bring either the Participant or cricket into disrepute is ultimately a matter for the Tribunal to determine.

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[28] e.g., The Football Association Rule E3.1 and Rugby Football Union Regulation 5.12.

[29] e.g.: *Rugby Football Union v Danny Cipriani*, *RFU Disciplinary Panel decision dated 28 August 2018*; *Rugby Football Union v Nathan Hughes*, *RFU Disciplinary Panel decision 23 October 2018*; *England and Wales Cricket Board v Alex Hales and Ben Stokes, decisions dated 7 December 2018*.

[30] *Russian Weightlifting Federation v International Weightlifting Federation CAS OG 16/09* [at 7.4, 7.13]: "*The panel is unable to agree that the term "disrepute" is ambiguous. It refers to loss of reputation or dishonour*." *Yerolimpos v World Karate Federation CAS 2014/A/3516* [at 105]: "*disciplinary provisions are not vulnerable to the application of the at rule [nulla poena sine lege] merely because they are broadly drawn. Generality and ambiguity are different concepts. The panel has little doubt that WFK sought, incumbently with other sports governing bodies, to draft a disciplinary provision of a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question*".

The language in the ICC Code is to be contrasted with the position in *Zubkov v Federation de Natation CAS 2007/A/1291* [at 19-20], in which the Panel said: '*The language of the relevant provision does not refer to "potential" disrepute, nor to conduct "having the potential" of bringing the sport into disrepute. When determining the proper meaning of Section 12.1.3 the starting point must be the ordinary meaning of the words used. If the meaning of the words used is clear, it is not permissible, in our view, to read other meanings, or qualified meanings, into such words. This is particularly so in our view when one has regard to the possible sanctions […]. Therefore, when Section 12.1.3 speaks of "disrepute", it does not cover potential disrepute. Section 12.1.3 speaks about "bringing the sport into disrepute". The conduct in question must thus result in the sport of swimming – as opposed to, for example, individuals involved in the sport of swimming – being brought into disrepute. In other words: public opinion of the sport of swimming must be diminished as a result of the conduct in questio*n'.

[31] Article 2.4.3 does not contain the debated phrase about bringing the sport into disrepute.

7.22 The second argument related to the question of the Election of Charges on which the Tribunal repeats mutatis mutandis what it said at para 7.14 above.

7.23 The third argument related to the absence of direct evidence.

7.24 In this regard, Mr Samuels cites CAS 2011/A/2625 *Mohamed Bin Hammam* v *Fédération Internationale de Football Association (FIFA)*, award of 19 July 2012 - which held at recital para 3 - *"In accordance with the relevant principles, FIFA has the burden of proving, pursuant to the FDC, to the "comfortable satisfaction" of the CAS panel that the evidence establishes that the facts it alleges have been met. In the absence of direct evidence, a panel shall not be comfortably satisfied of the charges of bribery against an official*."

7.25 Quite apart from that decision being on its face fact specific, under the Code to establish a charge to the requisite standard of comfortable satisfaction, the ECB can rely on "… any reliable means, including admissions and circumstantial evidence" (Article 3.2.1). To hold that a charge can be made good only by direct evidence contradicts the express words of the Code.

7.26 The fourth argument concerned the absence of corroboration of evidence relied on to support a charge.

7.27 Again the Code does not require corroboration, but only reliability based on an overall consideration of the evidence.

7.28 In the Tribunal's view the real issue before it is whether the admissible evidence adduced by the ECB, is of sufficient weight to establish the charges to the standard required. As discussed below, while most of the evidence relied upon is circumstantial, Mr Samuels' refusal to engage with the allegations and to provide any explanation for his conduct permits in the view of the Majority of the Tribunal ("the Majority") the making of firm conclusions in relation to both of the substantive charges. One member ("the Dissenting Member") disagrees in relation to the first, but not the second substantive charge, for reasons set out in her Partially Dissenting opinion set out at paragraph 8 below.

7.29 The ECB's case on the first limb of the First Substantive Charge i.e. the non-disclosure element is as follows:

(i) Mr Samuels received a gift, hospitality or other benefit in the form of the trip to Dubai in September 2019, including flights, hotel accommodation, meal at the Burj Al Arab, boat trip, evening at a nightclub (the "Dubai Hospitality"). Mr Samuels has confirmed that these items were all arranged and paid for by "*the team owner, through his assistant*" (see the response sent by Mr Samuel's then lawyer on his behalf dated 1 March 2020).

(ii) Mr Samuels failed to disclose the receipt by him of the Dubai Hospitality to the ICC ACU (in its position as the DACO under the Code) or

otherwise to the cricket authorities (either without unnecessary delay or indeed at all).

7.30 The ECB's case on the second limb of the First Substantive Charge i.e. the disrepute element is as follows:

(i) The Dubai Trip involved significant expenses (for example the flights from Jamaica and hotel accommodation).

(ii) Mr Samuels accepts that the Dubai Hospitality was provided by a "*team owner, through his assistant*", but refused to give the name of the team or individual, from which, from which the ECB infers that Mr Samuels was aware that the Dubai Hospitality was provided in suspicious circumstances related to fixing matches in the T10.

(iii) In [*ACU 1*]'s considerable experience, which he vouched for, it is not usual for players to be invited on all-expenses paid trips for the purpose of recruitment to a team; rather this is a common modus operandi of individuals seeking to fix aspects of cricket matches.

(iv) Mr Samuels is himself an experienced cricketer, and he has already been sanctioned (in 2008) for receiving hospitality (in the form of hotel accommodation) in circumstances that could bring himself or the game into disrepute. Mr Samuels should have been careful in accepting the hospitality after satisfying himself of the credentials of those offering it. He was also fully aware that this was hospitality that he ought to report to the ACU for that reason as well, in addition to his anti-corruption education.

(v) The radio interview in which Mr Samuels participated was organised by Mehar Chhayakar (a person known to have been involved in match fixing) who had no formal role with [*Team A*] such as could mean that he would reasonably have been involved in the Dubai trip. It was announced in October 2019 as well as in April 2021 that Mr Chhayakar had been charged with corruption offences[32].

(vi) [*Mr X*] had an image on his phone dated the date of the draft of a list of players for the team, on which Mr Samuels was the third-named player. Mr Samuels was picked for [*Team A*] in the draft despite the objections of the team coach ([*redacted*]) and there was a $200,000 purported 'sponsorship' linked to Mr Samuels. [*Mr X*] and Mr Samuels himself sought to have [*redacted*] replaced with [*redacted*].

(vii) [*Mr X*] was removed as team owner for [*Team A*] shortly before the T10 tournament as a result of an investigation into potential corrupt activities in domestic cricket in [*redacted*];

[32] Mr Samuels disclosure obligation was continuous so that even if he was unaware of Mr Chhayakar's circumstances in 2019 he must have been aware of them in 2021.

(viii) [*Mr X*] and Mr Chhayakar were connected and were in contact in November 2019 as evidenced by the messages exchanged between them which messages were found on [*Mr X's*] phone.

7.31 In light of the circumstances set out in the previous paragraph, according to the ECB it is reasonably to be inferred that the $200,000 purported 'sponsorship' was in fact the sum expected to be earned from match-fixing activities relating to Mr Samuels and that Mr Samuels was approached about fixing matches in the T10.

7.32 In the light of Mr Samuel's failure to cooperate with the ICC investigation, according to the ECB, it is also reasonable to infer that Mr Samuels was fully aware of the suspicious circumstances surrounding the Dubai Trip.

7.33 Mr Samuels submits by way of rejoinder to the ECB's case:

(i) he has provided a credible explanation for the Dubai trip i.e. to promote a cologne in which he had a business;

(ii) there is no evidence that he knew, or ought to have known, that any officials/administrators connected to an ICC sanctioned event were known corrupters of Cricket as asserted by the ICC.

(iii) There is no evidence that at any material time he even knew Mr Chhayakar or that Mr Chhayakar was involved in corrupting Cricket.

(vi) There is no evidence that he knew, or ought to have known, that any officials/administrators connected to the T10 event were known corrupters of Cricket.

(vii) It is common ground that he never played in the T10 event.[33]

(vii) No evidence was produced of the alleged sponsorship agreement.

(viii) Accordingly on those premises the conclusion must be that his conduct in connection with the Dubai trip could not be considered to be conduct which brings either him or the sport of Cricket into disrepute.

[33] Mr Samuels ingeniously suggested that "The mischief sought to be curtailed by Articles of the relevant Code did not occur in this instant matter neither was it, in the circumstances, likely to occur because Mr Samuels did not participate in the ECB T10 League. Therefore, the scope of the Code as outlined in **Article 1.1.1** being *"all cricket matches are to be contested on a level playing-field, with the outcome to be determined solely by the respective merits of the competing teams and to remain uncertain until the cricket match is completed"* was not compromised in any way by Mr Samuels". The Tribunal prefers to concentrate on whether the evidence supports the charges actually made under the Code. Mr Samuels was not charged with actually affecting the outcome of any match in T10. This argument accordingly would be relevant, if at all, to sanction if the substantive charges were made out.

7.34 The Tribunal would accept that the conclusion at paragraph 7.33(vii) would flow from the premises previously listed. The issue for it must be whether the premises are accepted.

7.35 The Majority finds the ECB's case in general, if not in its totality, on both substantive charges more persuasive than Mr Samuels defence but, because of the centrality of the issue, prefers to articulate its finding in its own words recognizing once more at the outset that the case against Mr Samuels is based on circumstantial evidence[34]. There is no smoking gun but as long as the evidence is admissible - the key criterion under the Code, being that of reliability - it is for the Tribunal to judge its cogency, in particular whether it is sufficient to bring home the charges made against Mr Samuels. Applying the relevant standard of proof while greater than a mere balance of probability is less than proof beyond a reasonable doubt.

7.36 As to the First Substantive Charge, the facts set out below persuade the Majority to the conclusion that it has been brought home.

7.37 First the Majority bears in mind that the genesis of the case against Mr Samuels is to be found in the first two paragraphs of the Notice of Charge which it repeats for ease of understanding:

"*1. Prior to the start of the 2019 T10, the ACU became aware that a number of approaches had been made to players and agents by a man calling himself 'Rehan Ali'. These approaches were said to include an offer to go to Dubai for a few days in order to meet team owners from the T10. The ACU's investigations revealed that Rehan Ali was actually an individual named Mehar Chhayakar who was known to the ACU as someone involved in corruption.*

2.The ACU's investigations suggested that Ali (aka Chhayakar) had interests in two teams in the T10 and he was offering players the possibility of playing for one of the teams, in exchange for which he would take 10% of the player's fee. The ACU understands that Ali also told players that they would have the opportunity to earn 'extra money' during the event, which is considered to be a euphemism for corruption."

Those facts were testified to by [*ACU 1*], whose evidence the Tribunal accepts, and were not themselves rebutted by Mr Samuels.

On this footing the T10 event had been identified as vulnerable to manipulation of results even before the Dubai trip itself was arranged or took place.

7.38 Second, if Mr Samuels was not consciously involved in that proposed corrupt enterprise it was his singular misfortune that coincidentally two of those who were, [*Mr X*], and Mr Chayyakar crossed his path. The Majority does not accept that this was mere coincidence.

[34] There is in principle no objection to reliance on circumstantial evidence in Sports disciplinary proceedings see g. the Essendon case CAS 2015/A/4059 where the concept is subject to detailed analysis.

7.39 Third there is no credible innocent answer to the question why [*Mr* X] was, against the wishes of his Team coach [*redacted*], keen to have Mr Samuels, a retired cricketer (even if one, at his peak, a brilliant and crowd pleasing player) to play in the Team and indeed took steps to replace that coach. [*Mr X*]'s vain attempts to escape involvement in those matters during his interview with [*ACU 1*] on 24th March 2020 (whose transcript the Tribunal has read) are evidenced by his explanations which, were, incoherent, self-serving and unconvincing especially when juxtaposed with the contemporary electronic material.

7.40 Fourth, the record shows that, contrary to his statements in the interview, Mr Samuels was involved in the choice of an alternative coach ([*redacted*]), [*redacted*].

7.41 Fifth, there is no credible explanation as to why Mr Chayyakar should involve himself in Mr Samuels promotion of his Cologne, unless it was part of the inducement to persuade him to come to Dubai for other less innocent purposes. Mr Samuels did not give any evidence as to his Cologne business and did not make himself available for cross examination where the credibility of this explanation could have been tested. Running a defence of this kind based on stray items of evidence and questions in cross examination to persons with no knowledge of their own of the key circumstances is inherently unsatisfactory.

7.42 Sixth, there is no innocent answer to the associated - and still more important question - as to why would [*Mr X*] finance a trip to Dubai for Mr Samuels simply to enable Mr Samuels to promote his cologne. What credible motive could he had had for such generosity? The Majority can find none.

7.43 The Majority reminds itself at this juncture of Article.3.2.3 of the Code, which provides, inter alia, "The *Anti-Corruption Tribunal* may draw an inference adverse to the *Participant* who is asserted to have committed an offence under this *Anti-Corruption Code* based on his/her failure or refusal, without compelling justification, after a request made in a reasonable time in advance of any hearing, to appear at the hearing (either in person or by video or telephone link, as directed by the *Anti-Corruption Tribunal*) and to answer any relevant questions".

7.44 The Majority considers that it not only can, but should utilize that provision, especially when read in the context of Mr Samuels previous failure or refusal to answer pertinent questions, when it comes to determine whether the ECB's case on the first and second charges is made out, for the following reasons:

(i) As recently as 2nd May 2023 Mr Samuels was again reminded of the intention of the ECB to rely on that provision if Mr Samuels chose not to appear at the hearing.

(ii) Mr Samuels could have been, especially with the benefit of the advice of experienced Leading Counsel, in no doubt of the potential consequences of his non-attendance.

(iii) Mr Samuels preferred to accept the risk of those consequences rather than to expose himself to any cross examination or questions from the Tribunal.

(iv) Not only did Mr Samuels not provide evidence himself at the hearing; but at no time did he provide an explanation for his non-attendance. His failure to attend not only lacked "compelling justification"; it lacked any justification at all.

(v) The questions he declined to answer at interview and, because his non-attendance, later at the hearing were questions almost all of which (if not indeed all of which) it was in his power to answer.

(vi) At the very least the ECB s case raised issues which required an answer, even if, by itself, it did not satisfy the criterion of comfortable satisfaction.

7.45 The Majority is therefore comfortably satisfied that Mr Samuels had no compelling justification for his silence described above - and none was relied on - and that he would not answer the questions which had been posed to him both during and after the interviews because he had no exculpatory answers.

7.46 The Majority would add that on the central element of his explanation for the Dubai trip i.e. the promotion of his Cologne, he provided no supporting evidence either, apart from the fact of the radio interview. This is but one example of the fact that he called no evidence from other persons to support his factual defence, nor provided any evidence as to any efforts, if any, he made to obtain such evidence, or any explanation as to why any such efforts bore no fruit. Instead, the suggestion that the trip was to promote his cologne and that Mr Chhayakar benevolently organised the radio interview, raised more questions than it answered.

7.47 Mr Samuels did make a personal statement before the end of the hearing, in accordance with a convention of CAS to be respectful of any Defendants interests, but only on terms that what he said would not be part of the evidential record or taken into account.by the Tribunal in making its award. All that Mr Samuels showed by the very making of this statement was that there was no logistical or physical reason why Mr Samuels could not have participated formally in the hearing.

7.48 In short on the basis of, on the one hand, the bulk of the evidence relied upon by the ECB and, on the other, the general, if not total, silence on the part of Mr Samuels, the Majority finds itself compelled to draw adverse inferences in relation to the motives of the sponsors of his trip, and his own state of knowledge of those motives, while acknowledging and respecting the view of its Dissenting Member.

7.49 As to the Second Substantive Charge**:**

(i) The ECB has estimated, after enquiry of appropriate sources at airlines, hotel and restaurant, (but unassisted by Mr Samuels) that the Dubai trip including, without limitation, flights, hotel accommodation, meals at expensive restaurants, boat trips would have cost in excess of US$3,000 (and significantly greater if the flights involved were business class).

(ii) It is undisputed that Mr Samuels did not disclose this hospitality.

7.50 Mr Samuel's, in effect bare denial, was that there was no evidence that he received any gift or hospitality from anyone constituting conduct which brings either him or the sport of Cricket into disrepute.

7.51 In the Tribunal's unanimous view, the first limb of the Second Substantive Charge is clearly established and there is, unlike under the First Substantive Charge, no second limb to be considered at all.

8. Partially Dissenting Opinion of Justice Kate O'Regan

8.1 I have had the opportunity to read the decision prepared by Mr Michael Beloff KC and Mr Harish Salve KC in this matter. I am in agreement with their decision save in one respect, which relates to the question whether the Anti-Corruption Unit (the ACU) of the International Cricket Council (the ICC) acting on behalf of the Emirates Cricket Board (the ECB) has established to my comfortable satisfaction, as required by article 3.1 of the ECB Anti-Corruption Code (the Code), that Mr Marlon Samuels acted in breach of Code Article 2.4.2 when he failed to disclose a gift of air travel to and accommodation in Dubai in September 2019, on the basis that the gift "was made in circumstances that could bring the Participant (Mr Samuels) or the sport of cricket into disrepute". For the reasons that are set out below, I am not comfortably satisfied that the ACU has established that Mr Samuels acted in breach of Code Article 2.4.2.

8.2 As set out in the main decision, the ACU were appointed by the ECB to serve as the Designated Anti-Corruption Official (DACO) under the Code for the November 2019 T10 cricket tournament (the T10 event) which was hosted in Abu Dhabi. Mr Samuels was originally recruited by one of the teams, [*Team A*], to play in the T10 event, but shortly before the tournament was to begin, his selection was apparently revoked and so he did not play in the T10 event.

8.3 The ACU argues that Mr Samuels received gifts and hospitality as stipulated in article 2.4.2 in the form of a trip to Dubai in September 2019, which included air flights, hotel accommodation, a meal at an expensive restaurant and an evening spent at a nightclub. These gifts and hospitality shall be referred to as "the Dubai trip". Mr Samuels admits that he received the Dubai trip. Indeed, he never sought to conceal that he travelled to Dubai as he posted pictures of his trip to his Instagram account, which is how the ACU became aware of the trip. Mr Samuels also admits that the Dubai trip was paid for by one of the owners of a team (through his assistant) that was competing in the T10 event, although he did not disclose the name of the team owner or the

assistant. Mr Samuels also admits that he did not disclose the Dubai trip to the ACU.

8.4 I pause here to note that the standard of proof in these proceedings requires that the Tribunal be comfortably satisfied that the charges have been established. This standard is more burdensome than that ordinarily required in civil proceedings, where the ordinary standard is on a preponderance of probabilities. Because these are disciplinary proceedings that can have a serious and adverse impact on a participant's career, the standard set is higher, and it requires the Tribunal to be comfortably satisfied that the facts underpinning the charges have been established. Accordingly, to prove charges on this standard, a case needs to have a clear and cogent basis, and not be based on speculation or conjecture.

8.5 The ACU argues, in the first place, that the record establishes that the Dubai trip was provided in circumstances that could bring the sport of cricket or Mr Samuels into disrepute, as contemplated by Code Article 2.4.2, without relying on an adverse inference drawn from Mr Samuels' failure to answer questions at the hearing, as permitted by Code Article 3.1. The ACU point to the fact that the Dubai trip involved significant expenses (including air flights and hotel accommodation) paid by a team owner. Such hospitality, the ACU argues, is not usual but, it asserts, is "a common modus operandi of individuals seeking to fix aspects of cricket matches". The ACU also points to the fact that Mr Samuels has previously been sanctioned (in 2008) for receiving hospitality in a manner that could bring himself or the game into disrepute and that he should have realised that he should have reported the hospitality to the ACU. The ACU also draws our attention to a radio interview given by Mr Samuels that was organised by a Mr Mehar Chhayakar who had no relationship with [*Team A*] but who has since been charged with match fixing and corruption offences. The radio interview concerned the promotion of a cologne product, promoted by Mr Samuels.

8.6 I am not comfortably satisfied that these facts on their own establish that when Mr Samuels received the Dubai trip, it could bring the sport of cricket, or himself, into disrepute. In my view, for conduct to bring the sport of cricket and/or Mr Samuels into disrepute, it would need to be shown that it could reasonably be inferred that the relevant conduct was improper, corrupt, dishonest, immoral or unlawful in a manner that reasonably would give rise to disapprobation by those who learned of it, so that they would think the worse of either Mr Samuels or of the sport of cricket, or both. The ACU argues that Mr Samuels' conduct in this matter was corrupt, in that, it is argued, the Tribunal can reasonably infer that Mr Samuels was recruited to participate in the T10 event on the basis that he would engage in some form of match-fixing. If this claim had been established on the record to the level of comfortable satisfaction, I would have had no hesitation in concluding that such conduct would bring the sport of cricket and Mr Samuels into disrepute. My difficulty lies in the fact that in my view that that claim has not been made out to the level of comfortable satisfaction.

8.7 [*ACU 1*] in his evidence, asserted that gifts of trips and hospitality, such as the Dubai trip, are rarely provided for innocent reasons, but are most often provided by those seeking to fix cricket matches. No other evidence was led to support this claim. While I accept that [*ACU 1*], is an experienced investigator who has acted in good faith in this matter, in my view an ordinary observer of cricket would not reasonably infer that the gift of the Dubai trip was, without more, improper, corrupt, dishonest, immoral or unlawful such as to bring the sport of cricket into disrepute. In this regard, I note that the obligation imposed by Code Article 4.2.2, and for that matter, Code Article 4.2.3, requires participants to disclose such trips to the relevant DACO. It does not prohibit participants from accepting such gifts. It may be that over the years, the ACU has formed the view that in most cases when trips are offered to players before tournaments that the individuals who are offering the trips are "seeking to fix aspects of cricket matches". If that is the case, however, that is not information that is in the public domain, and ordinary members of the public are therefore not likely to conclude from the fact that a trip has been given to a player, that the purpose was improper. For that to be established, more detailed and comprehensive evidence is required. I note that there may be a range of possible innocent explanations for a team owner or third party to sponsor a trip for a player. These could include the wish to meet the player, for example, or to persuade the player to join a particular team or to play in a particular tournament, or to meet with other potential members of the team or coaches. I am not comfortably satisfied therefore that it has been established on the record before the Tribunal that gifts of trips and hospitality are more commonly given by those seeking to fix matches in cricket, than for innocent purposes, and that the mere fact of the Dubai trip in this case establishes that it was given in circumstances which would bring the sport, or Mr Samuels, into disrepute.

8.8 I turn now to consider the additional evidence on the record that ACU referred to support their argument that the Dubai trip was given in circumstances that would bring the sport, or Mr Samuels, into disrepute. Overall this evidence is scant, and does not provide a basis for a conclusion that Mr Samuels agreed to be engaged in match-fixing or other misconduct. First, the ACU states that in September 2019 it received reports from three players that they had been contacted by a person, Rehan Ali, who had offered them the opportunity to travel to Dubai to meet team owners, that there was a possibility they could be included in a team for the T10 event, that Ali would take 10% of their fee as commission if that happened and that they would have an opportunity to earn "extra money" during the T10 event. The players reported the approach on the basis that they understood the "extra money" on offer related to corruption. These reports rightly alerted the ACU to the possibility of corrupt conduct relating to the T10 event and were one of the reasons that led to the ACU's investigation of Mr Samuels when it became aware of Mr Samuels' trip to Dubai in September 2019 through Mr Samuels' Instagram account. They do not however provide any strong indications that Mr Samuels' own trip was for the purpose of arranging match-fixing or for other corrupt or improper purposes.

8.9 Secondly, the ACU points out that two of the people whom, it appears from the record, were involved in Mr Samuel's Dubai trip, [*Mr X*], then one of the co-owners of [*Team A*], the team that recruited Mr Samuels, and Mr Chhayakar, who arranged the radio interview for Mr Samuels, were both subsequently charged with events relating to corruption in cricket (in [*Mr X*]'s case in relation to domestic cricket in [*redacted*], and in Mr Chhayakar's in relation to a tournament in Zimbabwe). It is not clear from the very sparse record whether Mr Samuels in fact did meet [*Mr X*] while he was in Dubai, nor is it clear what his relationship or association with Mr Chhayakar was. I agree with my colleagues that [*Mr X*]'s answers in his interview with the ACU are unsatisfactory but the interview raises more questions than it answers. I cannot conclude on the record that [*Mr X*] and Mr Chhayakar's association supports a conclusion to the level of comfortable satisfaction that the Dubai trip was made in circumstances that could reasonably bring cricket or Mr Samuels into disrepute. The fact that both [*Mr X*] and Mr Chhayakar have since been charged (in Mr Chhayakar's case successfully) with corruption in relation to other tournaments cannot found a conclusion that they were involved in corruption in the T10 event and it is notable that according to the record neither was charged with corruption in relation to it. There may have been many people involved in cricket, including many who are subject to the Code, who met with or associated with [*Mr X*] and/or Mr Chhayakar in the months leading to the T10 event. The fact of Mr Samuels' association with [*Mr X*] during the Dubai trip, therefore is thus not sufficient to provide comfortable satisfaction that the Dubai trip could reasonably bring the sport or Mr Samuels into disrepute.

8.10 Thirdly, the ACU also relies on the fact that according to the team coach, [*redacted*], [*Mr X*] insisted on selecting Mr Samuels for [*Team A*] on the basis that there was a sponsorship available if the team selected some West Indian players, especially Mr Samuels, of $200,000 although the precise details of the sponsorship were not clear to [*redacted*]. Nor is it clear from the record (as [*redacted*] did not know) who was to receive the $200,000 or from whom it would be received or for what reason it would be paid. This alleged sponsorship is indeed strange, and it is not surprising that it raised suspicions, but the record provides with no further detail sufficient to found a case of wrongdoing. In his interview [*Mr X*} denied that he had insisted on Mr Samuels, although this evidence cannot be considered reliable given that a photograph was found on [*Mr X*]'s phone with a list of cricketers which included Mr Samuels' name. Moreover, as stated above, I agree with the majority decision that [*Mr X*]'s responses to questions posed by the ACU were generally evasive and unsatisfactory. I conclude therefore that [*redacted*]'s evidence should be believed when he said that it was [*Mr X*] who had wanted Mr Samuels selected. [*Redacted*] told the ACU that he was opposed to the selection of Mr Samuels on the basis that he was "a difficult customer", had retired from cricket and had not even been picked for the Caribbean Premier League (his home league). [*Redacted*] also explained that he had been involved in the deselection of Mr Samuels just before the tournament began because another player whom he preferred had become available. By that stage, it would appear, [*Mr X*] had been removed as a team owner of [*Team A*] because he had been charged with corruption in relation to domestic cricket in [*redacted*].

Again, while this evidence raises questions about the sponsorship of $200,000, its source and purpose, which appeared to have been the basis for Mr Samuels' being picked for the team, it does not materially contribute to establishing a case to the level of comfortable satisfaction that Mr Samuels was selected so that he could engage in match-fixing or other conduct that could harm his own reputation or that of the sport of cricket.

8.11 Fourthly, the record shows that Mr Samuels made some attempt to identify a different coach for [*Team A*] team, but again, in my view, this does not necessarily point to a corrupt purpose.

8.12 Finally, the ACU points to the fact that Mr Chhayakar organised a radio interview on a local radio station (City 1016) for Mr Samuels to promote his cologne product during the Dubai trip. Mr Chhayakar had no formal link with [*Team A*]. It is clear on the record that he has had a record of being engaged in corruption relating to cricket, having been sanctioned for such behaviour in relation to a tournament, and investigated for it in relation to at other times. The fact that he arranged a radio interview for Mr Samuels during the Dubai trip may raise questions that warrant investigation, but it does not establish to the level of comfortable satisfaction that the receipt of the Dubai trip could bring the sport of cricket or Mr Samuels into disrepute.

8.13 The ACU argues that it is reasonably to be inferred from the facts set out above that the $200 000 "sponsorship" figure was a sum to be earned from match-fixing activities relating to Mr Samuels and that Mr Samuels had been approached to fix matches in the T10 event. As mentioned above, the evidence concerning the £200,000 sponsorship arose from [*redacted*]'s interview with the ACU. According to [*redacted*] this sponsorship related to several West Indies players being selected for the team, including Mr Samuels. [*Redacted*] did not know any more about the sponsorship deal, although he found it unusual. In my view, although it is clear that Mr Samuels' failure to cooperate with the investigation made it very difficult for the ACU to present a clear picture of the circumstances and events surrounding Mr Samuel's Dubai trip, it is not reasonable on this record, to infer that the figure of $200,000 was a sum that was to be earned by [*Mr X*] or perhaps Mr Samuels from match-fixing activities. There is not any material evidence that supports such an inference.

8.14 The ACU argues that if these facts are not sufficient to establish that the circumstances of the Dubai trip could have brought the sport of cricket, or Mr Samuels into disrepute, the case against Mr Samuels can be bolstered by the Tribunal drawing an adverse inference against Mr Samuels from his serial failures to cooperate, provide information or answer questions. Those failures included his failure to cooperate with the ACU investigation, including his failure to hand over one of his mobile devices, his failure to provide billing information for his mobile devices, his failure to provide full and complete answers to questions put to him by the ACU, his failure to sign the consent letter to enable the ACU to make enquiries and his failure to give evidence or answer questions at the hearing.

8.15 Code Article 3.2.2 provides that this Tribunal may draw an inference adverse where a participant has failed or refused to answer questions at the hearing, after a request has been made in a reasonable time, unless there are compelling reasons for that failure. I note that Article 3.2.2 limits its explicit authorisation to draw adverse inferences to the circumstances in which a participant has failed to answer questions at the hearing. I accept without deciding (noting that we heard no argument on the matter) that this explicit authorisation to draw adverse inferences should not prevent the Tribunal from drawing adverse inferences where a participant fails without satisfactory reason to comply with an investigation.

8.16 However, whether explicitly or implicitly permitted, the drawing of an adverse inference is subject to the principles of fair adjudicative reasoning. Accordingly, an adverse inference may only ordinarily be drawn where there is a clear case for a litigant to answer. The drawing of adverse inferences does not shift the burden of proof and so adverse inferences may not be used to shore up a speculative or flimsy case which does not call for a rebuttal. Moreover, a party arguing that an adverse inference should be drawn, as the ACU does in this case, needs to make clear precisely what factual inference they are calling for, and why it is a reasonable one in the circumstances.

8.17 It is not clear precisely what adverse inference the ACU suggests should be drawn from Mr Samuels' failure to cooperate. They assert that his failure to cooperate indicates that he wished to conceal who paid for his trip to Dubai, and that if he did disclose who paid for the trip it could bring the game, or himself into disrepute. However, Mr Samuels did admit that the Dubai trip was paid for by a team owner. On the record, one might infer that the relevant team owner would have been one of the co-owners of [*Team A*]. Assuming that were to be the case, and the relevant donor was [*Mr X*] or the other co-owner of [*Team A*], the ACU did not explain why that could bring the sport or Mr Samuels into disrepute and so result in a breach of Code Article 4.2.2.

8.18 In conclusion, it is not clear what adverse inference the ACU wishes us to draw that would result in a conclusion, to the point of comfortable satisfaction, that the Dubai trip was one that could result in the sport of cricket or Mr Samuels being brought into disrepute. It does not seem logically possible to infer from Mr Samuels' silence on the record before us that Mr Samuels had agreed to engage in match fixing at the T10 event. There is no evidence beyond the speculative on the record that supports such a conclusion. For these reasons, I am not comfortably satisfied that the ACU has made out a case against Mr Samuels on the first substantive charge.

8.19 In conclusion, I wish to note however that Mr Samuels' failure to cooperate with the investigation, which is the foundation of the procedural charges, is clearly established and is one of the factors which has led to the record before this Tribunal being inadequate on this first charge. I also note that Mr Samuels' failure to disclose the Dubai trip in violation of Code Article 4.2.3 is also established on the record, for which he gave no explanation. I note that it is perhaps not surprising that the Code imposes disciplinary consequences on participants who fail to disclose gifts, and who fail to cooperate with

investigations, because the task of establishing misconduct such that will bring the sport of cricket, or the relevant participant into disrepute, may often be difficult. Given the benefits and opportunities that participating in the sport of cricket at international level affords players, it is appropriate and fair that they should be expected to disclose large gifts and to cooperate with investigations to ensure the integrity of the sport of cricket in the interests of all who are engaged in and follow the sport. The Tribunal's unanimous finding that Mr Samuels has violated the Code in relation to the other three charges are serious findings which will warrant an appropriate sanction. On the other hand, in my view, it is equally in the interests of fairness and integrity in sport, that this Tribunal should not conclude that a charge has been made out unless it is comfortably satisfied that it has been, which is why I have thought it necessary to record my disagreement with my respected colleagues on this score.

9. Conclusion

9.1. For the reasons adumbrated above the majority of Tribunal finds that all the charges against Mr Samuels have been made out. The Dissenting Member agrees with the majority other than as to the First Substantive Charge.

9.2 The Tribunal directs that each party makes written submissions as to sanction within 14 days of receipt of this award.

Michael J Beloff KC Chair
Justice Kate O'Regan
Harish Salve KC

Blackstone Chambers Temple,
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11 August 2023