

IN THE MATTER OF PROCEEDINGS BEFORE THE ANTI-CORRUPTION TRIBUNAL
ESTABLISHED UNDER THE ICC ANTI-CORRUPTION CODE

BETWEEN:

INTERNATIONAL CRICKET COUNCIL (“ICC”)

-and-

MR SHAIMAN ANWAR BUTT (“Mr Anwar”)

INTERNATIONAL CRICKET COUNCIL (“ICC”)

-and-

MR MOHAMMED NAVEED (“Mr Naveed”)

INTERNATIONAL CRICKET COUNCIL (ON BEHALF OF THE EMIRATES CRICKET
BOARD (“ECB”))

-and-

MR MOHAMMED NAVEED (“Mr Naveed”)

DECISION ON SANCTIONS

INTRODUCTION

1. In paragraph 104 of its Award dated 20 January 2021 (the **Liability Award**) the Tribunal invited submissions on sanctions from all parties. Those submissions have been duly

received, from the ICC on 27 January 2021, from Mr Anwar on 29 January 2021, and from Mr Naveed (who was granted an extension for medical reasons) on 10 February 2021.

2. The Tribunal is grateful for all those submissions which it has carefully read.

THE LIABILITY AWARD

3. The Liability Award records that the Tribunal concluded as follows:

- 3.1 That Shaiman Anwar Butt was guilty of two offences under the ICC Anti-Corruption (**Code**), namely:¹

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

- 3.1.2 Code Article 2.4.4. *'Failing to disclose to the ACU (without unnecessary delay) full details of any approaches or invitations received by the Participant to engage in Corrupt Conduct under the Anti-Corruption Code'.*

- 3.2 That Mohammed Naveed was guilty of two offences under the ICC Anti-Corruption (**Code**), namely:²

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

¹ Liability Award, paragraphs 97-98.

² Liability Award, paragraphs 99-100.

3.2.2 Code Article 2.4.4. *'Failing to disclose to the ACU (without unnecessary delay) full details of any approaches or invitations received by the Participant to engage in Corrupt Conduct under the Anti-Corruption Code'*.

3.3 That Mohammed Naveed was also guilty of two offences under the ECB Anti-Corruption Code (the **ECB Code**), namely³:

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

3.3.2 Code Article 2.4.4. *'Failing to disclose to the Designated Anti-Corruption Official (without unnecessary delay) full details of any approaches or invitations received by the Participant to engage in Corrupt Conduct under this Anti-Corruption Code'*.

SANCTIONS: ARTICLE 6

4. The Code sets out the approach to sanctions in Article 6, so far as material, as follows:

"6.1 *Where a breach of the Anti-Corruption Code is admitted by the Participant or upheld by the Anti-Corruption Tribunal, the Anti-Corruption Tribunal will be required to impose an appropriate sanction upon the Participant from the range of permissible sanctions described in Article 6.2. In order to determine the appropriate sanction that is to be imposed in each case, the Anti-Corruption Tribunal must first determine the relative seriousness of the offence, including identifying all relevant factors that it deems to:*

6.1.1 *aggravate the nature of the offence, including (without limitation):*

6.1.1.1 *a lack of remorse on the part of the Participant;*

³ Liability Award, paragraphs 101-102.

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- 6.1.1.2 *the Participant's bad previous disciplinary record (including where the Participant has previously been found guilty of another offence under the Anti-Corruption Code and/or any predecessor regulations of the ICC and/or any anti-corruption rules of any National Cricket Federation);*
- 6.1.1.3 *where the amount of any profits, winnings or other Reward directly or indirectly received by the Participant as a result of the offence(s) is substantial and/or where the sums of money otherwise involved in the offence(s) were substantial;*
- 6.1.1.4 *where the offence substantially damaged (or had the potential to damage substantially) the commercial value and/or the public interest in the relevant International Match(es);*
- 6.1.1.5 *where the offence affected (or had the potential to affect) the result of the relevant International Match(es);*
- 6.1.1.6 *where the welfare of a Participant or any other person has been endangered as a result of the offence;*
- 6.1.1.7 *where the offence involved more than one Participant; and/or*
- 6.1.1.8 *any other aggravating factor(s) that the Anti-Corruption Tribunal considers relevant and appropriate.*
- 6.1.2 *mitigate the nature of the offence, including (without limitation):*
 - 6.1.2.1 *any admission of guilt (the mitigating value of which may depend upon its timing);*
 - 6.1.2.2 *the Participant's good previous disciplinary record;*
 - 6.1.2.3 *the youth and/or lack of experience of the Participant;*
 - 6.1.2.4 *where the Participant renounced the attempt or agreement prior to it being discovered by a third party not involved in the attempt or agreement;*
 - 6.1.2.5 *where the Participant has cooperated with the ACU and any investigation or Demand carried out by it;*

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- 6.1.2.6 *where the offence did not substantially damage (or have the potential to substantially damage) the commercial value, integrity of results and/or the public interest in the relevant International Match(es);*
- 6.1.2.7 *where the offence did not affect (or have the potential to affect) the result of the relevant International Match(es);*
- 6.1.2.8 *where the Participant provides Substantial Assistance to the ICC, any other National Cricket Federation, a criminal authority, or a professional disciplinary body;*
- 6.1.2.9 *where the Participant has already suffered penalties under other laws and/or regulations for the same offence; and/or*
- 6.1.2.10 *any other mitigating factor(s) that the Anti-Corruption Tribunal considers relevant and appropriate.*

6.2 *Having considered all of the factors described in Articles 6.1.1 and 6.1.2, the Anti-Corruption Tribunal shall then determine, in accordance with the following table, what the appropriate sanction(s) should be:*

ANTI-CORRUPTION CODE OFFENCE	RANGE OF PERMISSIBLE PERIOD OF INELIGIBILITY	ADDITIONAL DISCRETION TO IMPOSE A FINE
<i>Article 2.1.1, 2.1.2, 2.1.3 or 2.1.4 (Corruption)</i>	<i>A minimum of five (5) years and a maximum of a lifetime.</i>	<i>In all cases, in addition to any period of Ineligibility, the Anti- Corruption Tribunal shall have the discretion to impose a fine on the Participant of such amount as it deems appropriate.</i>
<i>...</i>	<i>...</i>	
<i>Any of Articles 2.4.1 to 2.4.6, inclusive (General)</i>	<i>A minimum of six (6) months and a maximum of five (5) years.</i>	

6.3 *For the avoidance of doubt:*

6.3.1 *.....;*

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

6.3.3 *where a fine and/or costs award is imposed against a Participant, such fine and/or costs award must be paid: (a) by the Participant (and not, unless the ICC agrees, by any other third party, including a National Cricket Federation); (b) directly to the ICC no later (subject to Article 6.7) than one calendar month following receipt of the decision imposing the fine; and*

6.3.4 *.....*

6.4 *Any period of Ineligibility imposed on a Participant shall commence on the date that the decision imposing the period of Ineligibility is issued; provided that any period of Provisional Suspension served by the Participant shall be credited against the total period of Ineligibility to be served."*

5. In summary:

- (i) The range of Ineligibility for the offences with which Mr Anwar and Mr Naveed have been found guilty is prescribed by Code Article 6.2⁴. For offences under Code Article 2.1.1 the minimum period of Ineligibility is five (5) years and a maximum of a lifetime, and for offences under Code Article 2.4.4 the minimum period of Ineligibility is six (6) months and a maximum of five (5) years. Additionally, for each offence, the Tribunal has the discretion to impose a fine of such amount as it deems appropriate.
- (ii) In determining that sanction, the Tribunal must determine the relative seriousness of the offence, including identifying any relevant aggravating and mitigating

⁴ Unless otherwise stated, defined terms used in this Decision have the meaning given to them in Appendix 1 to the ICC Anti-Corruption Code (the "Code"). The terms of the ECB Code are based on the Code, with appropriate modifications to reflect that it applies domestically as opposed to internationally. Accordingly all references to the Code should be considered to reflect the terms of both the ICC Anti-Corruption Code and the ECB Anti-Corruption Code, unless specifically expressed otherwise.

factors (Code Articles 6.1.1 and 6.1.2)(which include specified factors and any other unspecified factors⁵ that the Tribunal considers relevant and appropriate).⁶

- (iii) The Tribunal must undertake a qualitative exercise, assessing the weight to give to each prescribed element in determining an appropriate sanction in each case.⁷

INHERENT SERIOUSNESS OF THE OFFENCE

1. Both Mr Anwar and Mr Naveed have been found by the Tribunal to have committed offences under Code Article 2.1. As stated in the Liability Award⁸ “(Mr Anwar) and Mr Naveed attempted to reach an agreement with Mr X (i.e. contrived) to the effect that, in exchange for payment from Mr X, (Mr Anwar) and Mr Naveed would underperform in certain aspects of upcoming matches in the Qualifiers.”
6. The Tribunal accepts that these are the most serious offences contemplated by the Code, because they go to the very core of the fundamental sporting imperatives that underpin it⁹ and accordingly that in light of the inherent seriousness of the offending, that in

⁵ Article 6.1.1.8 (aggravating) Article 6.1.2.10 (mitigating).

⁶ See ICC v Ansari, Award dated 19 February 2019, at paragraph 7.14) and ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 5.

⁷ See ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 9.

⁸ Liability Award, paragraph 97.

⁹ See Code Articles 1.1.1 to 1.1.5: (“The ICC has adopted this Anti-Corruption Code in recognition of the following fundamental sporting imperatives: 1.1.1 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. This is the essential characteristic that gives sport its unique appeal. 1.1.2 Public confidence in the authenticity and integrity of the sporting contest is therefore vital. If that confidence is undermined, then the very essence of cricket will be shaken to the core. 1.1.3 Advancing technology and increasing popularity have led to a substantial increase in the amount, and the sophistication, of betting on cricket matches. The development of new betting products, including spread-betting and betting exchanges, as well as internet and phone accounts that allow people to place a bet at any time and from any place, even after a cricket match has started, have all increased the potential for the development of corrupt betting practices. That, in turn, increases the risk that attempts will be made to involve Participants in such practices. This can create a perception that the integrity of the sport is under threat. 1.1.4 Furthermore, it is of the nature of this type of misconduct that it is carried out under cover and in secret, thereby creating significant challenges for the ICC in the enforcement of rules of conduct. As a consequence, the ICC needs to be empowered to seek information from and share information with competent authorities and other relevant third parties, and to require Participants to cooperate fully with all investigations and requests for information. 1.1.5 The ICC is committed to taking every step in its power (a) to prevent corrupt practices undermining the integrity of the sport of cricket, including any efforts to influence improperly the outcome or any other aspect of any Match; and (b) to

determining the appropriate sanction the Tribunal should weigh very heavily in mind those imperatives – inter alia (i) deterring others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport),¹⁰ (ii) maintaining public confidence in the sport,¹¹ and (iii) preserving public confidence in the readiness, willingness and ability of the ICC and its National Cricket Federations to protect the sport from such corrupt practices.¹²

7. However, the Code itself stipulates that even for such offences the five-year minimum period of ineligibility could suffice. Whether it is sufficient or should be exceeded and, if so, by how much, is a fact specific matter. The Tribunal accepts that in appropriate cases the period could mean a lifetime ban from the sport¹³ – such cases including where a

preserve public confidence in the readiness, willingness and ability of the ICC and its National Cricket Federations to protect the sport from such corrupt practices’).

¹⁰ See, e.g., ICC v Butt, Asif and Amir, Anti-Corruption Tribunal decision dated 5 February 2011, para 217, (‘We must take account of the greater interests of cricket which the Code itself is designed to preserve and protect. There must, we consider, be a deterrent aspect to our sanction’); ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 7 (‘the Tribunal accepts that in determining the appropriate sanction against each of the Respondents it should weigh very heavily these fundamental sporting imperatives, including, in particular, the need (i) to deter others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport),³ and (ii) to maintain public confidence in the sport’); ICC v Ikope, Award dated 5 March 2019 (, at para 8.20 (‘[I]n light of the inherent seriousness of the offences, the ICC submits that the Tribunal should weigh heavily the fundamental sporting imperatives undermining (sic) the Code (Code Article 1.1) in determining the appropriate sanction – including in particular (i) deterring others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport, and (ii) maintaining public confidence in the sport’)).

¹¹ See e.g., in relation to the point of principle, Bolton v Law Society [1994] 1 W.L.R. 512 (, at 518 (‘To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission ... A profession’s most valuable asset is its collective reputation and the confidence which that inspires’). Also, in the sporting context, Bradley v Jockey Club [2005] EWCA Civ 1056 (at para 24, (‘Where an individual takes up a profession or occupation that depends critically upon the observance of certain rules, and then deliberately breaks those rules, he cannot be heard to contend that he has a vested right to continue to earn his living in his chosen profession or occupation. But a penalty which deprives him of that right may well be the only appropriate response to his offending’). See also for cricket specific cases ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 7 and ICC v Ikope, Award dated 5 March 2019 (at para 8.20).

¹² See Code Article 1.1.5.

¹³ See PTIOs v Lindhal CAS 2017/A/4956, paras 61-78, making clear (at paras 68-69) that ‘[A] severe sanction is required to punish and deter match-fixing and ... permanent eligibility may be a proportionate sanction for players who are involved in such corruption offences ... in order to be considered appropriate and proportionate, [permanent eligibility] must be based on the given circumstances in each case...’. (Lindhal is a tennis case concerning the Tennis Anti-Corruption Program, but the reasoning is, in the Tribunal’s view, applicable, *mutatis mutandis*, to the Code).

respondent has sought to corrupt others.¹⁴ Mr Anwar and Mr Naveed's offences did not amount to actual fixing; nor, in the Tribunal's view, could their conduct be equated qualitatively to that which on a single occasion has attracted a lifetime ban under the Code¹⁵. That said, the Tribunal considers that the imperatives referred to require in the present climate where corruption in cricket persists and meaningful deterrence is demanded that sanctions substantially above the minimum are the appropriate starting point in both Mr Anwar and Mr Naveed's cases

AGGRAVATING AND MITIGATING FACTORS

Aggravating factors

8. The ICC has relied on the following aggravating factors, both specified¹⁶ and unspecified, as relevant to the Tribunal's determination of the appropriate sanction:

8.1 In the case of Mr Naveed, at the time of his offending he was the captain of the UAE national team and thus held a position of trust and owed a duty to uphold the integrity of the game, as he was someone who should have acted as a role model to cricketers in the UAE and elsewhere.

8.2 In the position of captain, Mr Naveed's offending damages the Emirates Cricket Board and has, at least, the potential to damage cricket more generally, not only in the UAE but globally.¹⁷

¹⁴ See, e.g., ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 19, quoting para 8.33 of Savic v PTIOs CAS 2011/A/2621), a tennis case concerning the proportionality of a lifetime ban (which quotation itself refers to various other previous CAS cases). In Ahmed, Ahmed and Amjad, the Ahmed brothers both received lifetime bans (the only such bans imposed to date under the Code), as specifically sought by the ICC in that case, having engaged in a prolonged and sophisticated campaign of corrupt conduct. In Savic, the tennis player David Savic received a lifetime ban for an attempt to corrupt one other player.

¹⁵ ie ICC v Ahmed, Ahmed and Amjad cit. sup. fn 14

¹⁶ See the adjacent reference in the ensuing text to the relevant article of the Code.

¹⁷ See, by analogy, ICC v Ikope, Award dated 5 March 2019) at paragraph 8.22.3 (in which Mr Ikope's position as Director of Zimbabwe Cricket was found to have this effect/potential effect).

- 8.3 Both were experienced international cricketers at the time of their offending, who had attended a number of anti-corruption education sessions.¹⁸ In other words, they were very well aware of their anti-corruption obligations and the ICC's efforts in respect of combatting anti-corruption, which they therefore knowingly and very seriously undermined.
- 8.4 The lack of remorse of both Mr Anwar and Mr Naveed in respect of the Article 2.1 offences and the failure to cooperate with the ACU's investigation and their repeated denials throughout the ACU's investigation and the Tribunal proceedings of the facts presented by the ICC (Article 6.1.1.).
- 8.5 The lack of remorse and refusal to put forward an accurate account of the events has been compounded by the approach they both took in these proceedings, namely through their refusal to present themselves for cross examination by the ICC or for questioning by the Tribunal from which the Tribunal drew an adverse inference.¹⁹
- 8.6 The approach to Mr X was clearly pre-meditated, at least by Mr Anwar, given that Mr Anwar asked Mr Y to arrange a meeting between him and Mr X.²⁰
- 8.7 While the suggested fixes did not go ahead, (by virtue of the fact that these facts came to the attention of the ICC in advance of the matches that the fixes related to²¹) they had the potential to substantially damage the commercial value and/or public interest in the relevant matches (namely the ICC World T20 Qualifiers and also, in the case of Mr Naveed, the 2019 T10 League) (Article 6.1.1.4.)

¹⁸ See education sessions at HB tab 12. In their respective international careers, Mr Naveed attended at least seven ICC anti-corruption education sessions and Mr Anwar attended at least six ICC anti-corruption education sessions.

¹⁹ Liability Award, paragraph 46.

²⁰ Liability Award, paragraph 68.

²¹ And thus both players were charged on an expedited basis and provisionally suspended before the dates of the relevant matches.

- 8.8 The amounts of money discussed (up to AED 1 million) were substantial²² (Article 6.1.1.5.).
- 8.9 The offence has involved more than one Participant (Article 6.1.1.7.).
- 8.10 Both Mr Anwar and Mr Naveed sought to corrupt others, namely Mr X (irrespective of whether either Mr Anwar or Mr Naveed were aware of Mr X's prior involvement in corrupt activity).
9. The Tribunal accepts that, in so far as established, all those factors can in principle be categorised as aggravating with the proviso that, as a matter of construction of the Code, non-cooperation is not an aggravating fact; rather its absence denies a participant the benefit of co-operation as a mitigating factor (Article.6.1.2.5).
10. The Tribunal notes too that Mr Anwar makes only a qualified answer to them which, save where otherwise stated, is conveniently reflected in his submissions under the heading Mitigation. In particular, while the Tribunal accepts that the integrity of results, the commercial value, and/or the public interest in any International Match was not affected, it observes that the relevant Articles, Articles 6.1.1.4 and 6.1.1.5, address the potential as well as the actual.
11. Mr Anwar also methodically and accurately indicated those listed aggravating factors which were absent from his case i.e. those referred to in Article 6.1.2.2, 6.1.1.3 and 6.1.1.6. However, since none of those were relied on by the ICC this did not advance his case since they do not amount in themselves to mitigation.

Mitigating factors

12. On the evidence before the Tribunal neither Mr Anwar nor Mr Naveed has had any relevant previous disciplinary record - Article 6.1.2.2 (although ICC submit that this might count for little when weighed against the seriousness of their offending²³).

²² Liability Award, paragraph 73.

²³ See *ICC v Ansari*, Award dated 20 February 2019, at paragraph 8.3 ('The Tribunal appreciates that this is the maximum sanction in terms of ineligibility vouched for by the Code but the seriousness of the

Mr Anwar

13. Mr Anwar, in mitigation, made the following assertions.

13.1 That he has already showed his repentance and remorse while replying to the ICC through his email dated 28 October, 2019 (and through his Answer, para 22). After careful scrutiny of this material, in the Tribunal's view the claim stretches the concept of remorse in its ordinary meaning beyond breaking point. In the email of 28 October 2019 Mr Anwar accepts that he had a duty to inform the ACU but goes on to say that he "*could not do it keeping in mind the nobility and fair dealing of my friend [Mr Y]*". This is rationalization, not remorse. There is no expression of regret, let alone utmost regret, the epithet deployed in the Answer, which incidentally also seeks to resile from the admission made in interview (Article 6.1.2.1).

13.2 That this was the first time he experienced such like circumstances and he remained in confusion and did not know how to deal with all this (Article 6.1.2.3). In the Tribunal's view, this misinterprets the meaning of the Article which is meant to assist those who can rely on youth and inexperience, neither of which are to be found in the case of the mature Mr Anwar.

13.3 That no agreement of any nature was ever entered into by him. But the Tribunal must comment that on that very premise Mr Anwar cannot claim the benefit of having renounced the same prior to its discovery by an uninvolved third party - Article 6.1.2.4. It adds that failure to agree monetary terms for the proposed fix (a further reason why the fix did not go ahead) does not, on any view, redound to his credit.

13.4 That he has cooperated with the ACU from his first interview conducted on 6 October, 2019 and even submitted his Cell Phone on demand of the ACU there and thence (Article 6.1.2.5). The Tribunal accepts that Mr Anwar submitted his Cell

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

phone on 6 October 2019 but notes note that, under the Code, he was obliged to do so²⁴ on pain of penalty for non-compliance²⁵. Any co-operation was far from full, indeed was at best the minimum required by the Code. It could fairly be said that, far from cooperating with the ACU, Mr Anwar persistently misled them as the Liability Award records.

13.5 That no damage/substantial damage has been caused to the commercial value, integrity of result or the public interest of any relevant International Match. The Tribunal has already noted that this fails to distinguish between actual and potential damage (Article 6.1.2.6).

13.6 That no result of any International Match was affected by him and he did not cause any potential effect to the result of any International Match. (Ditto as above, Article 6.1.2.7).

13.7 That he has provided full assistance to the ICC and the Honourable Tribunal in toto. This is, in the Tribunals view, an audacious submission given his reluctance to make any admissions of material fact to the ACU until confronted with evidence which compelled such admissions. Furthermore he declined to give evidence before the Tribunal itself (Article 6.1.2.8).

14. The Tribunal can detect no other mitigating factor in Mr Anwar's case.

Mr Naveed

15. Mr Naveed made the following assertions:

15.1 That he has never indulged in betting or any anti-corruption activities as per the ICC Code and has never been convicted before of any such charges (Article 6.1.2.2). This is common ground.

²⁴ Article.2.4.6, Article.4.3

²⁵ Article 6.2.

- 15.2 That he, in his interviews and conversations through WhatsApp with ICC officials, had expressed remorse. The Tribunal is unable to identify any statement which would unequivocally qualify as remorse for his actions as distinct for the predicament in which they had placed him. The closest was the statement he made in interview *"I regret that in saving my friend i did wrong to myself."* when apologising for his delay in reporting the corrupt discussions in which others were involved. His next observation. *"I have fully cooperated with ACU and give aforesaid statement"* also falls far short of a complete admission of guilt since that such statement did not itself by any means embrace the full findings of misconduct which the Tribunal concluded were proved against him. In the Tribunal's view, Article 6.1.2.1 contemplates that there will be real mitigation where a timely admission may save the costs and expense of a hearing, which was not what occurred in Mr Naveed's case.
- 15.3 That he has never ever accepted any amount of consideration apart from his salary for serving the national team of UAE. The Tribunal considers this to amount to an absence of aggravation, not the presence of mitigation.
- 15.4 That his activities have not affected any match, whether domestic or international. As to this the Tribunal repeats the point it made above in respect of Mr Anwar's similar assertion.
- 15.5 That he has not influenced any one of his team members in any way for acting contrary to the ICC Code of Conduct. The Tribunal considers this again to amount to an absence of aggravation, not the presence of mitigation.
- 15.6 That he did not continue any relation with the alleged whistle blower. The Tribunal considers this yet again to amount to an absence of aggravation, not the presence of mitigation.
- 15.7 That he, as and when necessary, has cooperated with the ICC Investigation Unit. The Tribunal considers this to be something of an exaggeration and, as in Mr Anwar's case, likewise falls short of the mitigation envisaged in Article 6.1.2.5.

16. In short Mr Naveed's points essentially reflect those of Mr Anwar and the Tribunal essentially evaluates them in the same way.

APPLICATION OF CODE ARTICLE 6.3.2

17. Both Mr Anwar and Mr Naveed have been found by the Tribunal to have committed multiple offences under the Code. In such circumstances, Code Article 6.3.2 is engaged, which provides that 'where a Participant is found guilty of committing two offences under the Anti-Corruption Code in relation to the same incident or set of facts, then (save where ordered otherwise by the Anti-Corruption Tribunal for good cause shown) any multiple periods of Ineligibility imposed should run concurrently (and not cumulatively)'.
18. Previous Tribunals have noted that (i) Code Article 6.3.2 does not define the degree of proximity for the requisite relationship to subsist between the offence and the relevant incident or set of facts, (ii) under English law, which is the governing law of the Code,²⁶ proximity is dictated by context,²⁷ and the relevant context here is of the exception to the general rule that would allow the Tribunal freedom to determine whether periods of Ineligibility should run cumulatively or concurrently, and (iii) in principle therefore the phrase 'in relation to' should be construed narrowly rather than broadly in the context of Code Article 6.3.2.²⁸
19. The ICC submits that, adopting a narrow construction, Code Article 6.3.2 does not apply, because each charge concerns a separate incident/set of facts - the Code Article 2.1.1 charge concerns the players contriving to fix the result, progress, conduct or other aspect of one or more International Matches (or alternatively or additionally that they were party to such an effort alongside their co-Defendant and/or Mr X), and the Code Article

²⁶ Code Article 11.5.

²⁷ See, for example, Svenska Petroleum Exploration AB v Lithuania [2006] EWCA Civ 1529 , at para 137.

²⁸ See ICC v Ansari, Award dated 19 February 2019, at paragraph 7.6 *et seq.* ; ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 16).

2.4.4 charge concerns their failure to report the dealings they had with their co-Defendant and Mr X.

20. Even if the ICC's analysis be technically correct, the ICC rightly accepts that whether to apply Code Article 6.3.2 is a matter for the discretion of the Tribunal, and the Tribunal recognizes that participating in corrupt activity and failure to report such participation can, in a case such as this, arguably be seen as two sides of the same coin. Accordingly the Tribunal will not order any period of ineligibility it might impose to run consecutively rather than concurrently.
21. In the Tribunal's view, the overriding consideration must be whether the sanctions imposed on Mr Anwar and Mr Naveed reflect to the seriousness of their offending.
22. In its view, a period of ineligibility of eight years justly addresses the offence of each Defendant. The Tribunal sees no reason to differentiate between Mr Anwar and Mr Naveed in what, on its own findings in the Liability Award, was a joint enterprise.
23. The Tribunal accepts that Mr Anwar has not received any salary from his home board i.e. the Emirates Cricket Board (ECB) since his suspension dated 16th October, 2019 and that he has already been passing through what he terms a "*severe financial crunch*" Mr Naveed has also drawn in attention to his non receipt of salary from the same date. The Tribunal sees no reason why the period of ineligibility proposed does not sufficiently respond to their wrong doing without any additional monetary penalty. Moreover such period of ineligibility will also result in loss of income for each and it will therefore not impose a fine on either²⁹.

²⁹ Both players ask the Tribunal to give a direction as to their payment of salary. This is not a matter within the Tribunal's remit and it must therefore decline to give such direction.

24. The Tribunal declines to make an order for costs, not because in principle it is not appropriate, but because the Tribunal considers that, given their continued ineligibility, neither party would be able to pay more than a token sum.

CONCLUSION

25. Based on the foregoing, the Tribunal:

- (i) imposes a period(s) of Ineligibility on Mr Anwar and Mr Naveed of eight years backdated under Article.6.4 to 16th October 2019 since which dates they have been under provisional suspension;
- (ii) declines to impose a fine on either Mr Anwar or Mr Naveed; and
- (iii) declines to make an order for costs against either Mr Anwar or Mr Naveed.

Michael J Beloff QC Chair
Michael Heron QC
Imtiaz Ahmad
11.March 2021