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

**Between:**

**THE INTERNATIONAL CRICKET COUNCIL (“ICC”)**

**And**

**MR NUWAN ZOYSA**

**DECISION ON SANCTIONS**

**INTRODUCTION**

1. On 9 January 2021, the Tribunal handed down its Liability Award[[1]](#footnote-1) and invited submissions on sanction pursuant to paragraph 14.1.[[2]](#footnote-2)
2. On 29 January 2021, the ICC filed its submissions. On the same date Mr Zoysa filed his submissions coupled with an invitation to the Tribunal to hold a hearing on the issue. On 1 February 2021, the ICC submitted that there was no need for a hearing but offered in lieu a second round of submissions. On 3 February 2021, the Tribunal accepted the ICC’s alternative proposal. On 19 February 2021, the parties informed the Tribunal that they had agreed to dispense with a second round of submissions but that the decision on sanctions should not be handed down until 12 March 2021, a position which the Tribunal was happy to accommodate. The Tribunal is grateful for all the submissions which it has carefully read.

**The Liability Award**

1. The Liability Award records that the Tribunal concluded that Mr Zoysa was guilty of three offences under the ICC Anti-Corruption Code (‘the Code’), namely:[[3]](#footnote-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 International Match, including (without limitation) by deliberately underperforming therein’.
	2. Code Article 2.1.4, ‘Directly or indirectly soliciting, inducing, enticing, instructing, persuading, encouraging or intentionally facilitating any Participant to breach any of the foregoing provisions of this Article 2.1’*.*
	3. 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’.

# **Article 6**

1. The Code sets out the approach to sanctions in Article 6, which provides, 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;*

***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;*

***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*** |
| *Article 2.1.1, 2.1.2, 2.1.3 or 2.1.4 (Corruption)* | *A minimum of five (5) years and a maximum of a lifetime.* | *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.*  |
|  |  |
|  |  |
|  |  |
| *Any of Articles 2.4.1 to 2.4.6, inclusive (General)* | *A minimum of six (6) months and a maximum of five (5) years.* |

## ***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*.

1. The Tribunal will set out where possible verbatim the parties’ submissions on the various sanctions issues before proceeding to its own analysis.

**Inherent seriousness**

1. The ICC notes that the Article 2.1 offences are the most serious offences contemplated by the Code, going to the very core of the fundamental sporting imperatives that underpin it.[[4]](#footnote-4)
2. In light of the inherent seriousness of the offending, the ICC accordingly submits that in determining the appropriate sanction the Tribunal should weigh very heavily these fundamental sporting imperatives – including in particular (i) deterring others from similar wrongdoing (i.e., preventing corrupt practices from undermining the sport),[[5]](#footnote-5) (ii) maintaining public confidence in the sport,[[6]](#footnote-6) and (iii) preserving public confidence in the readiness, willingness and ability of the ICC and - more specifically in this case, given Mr Zoysa’s role with and employment by Sri Lanka Cricket (**SLC**) - its National Cricket Federations to protect the sport from such corrupt practices.[[7]](#footnote-7) The ICC supports its stance with copious reference to jurisprudence.
3. The ICC further submit that sanctions at or towards the top end of the range of permissible sanctions are the appropriate starting point in Mr Zoysa’s case (before considering any aggravating or mitigating factors). As to the range of sanctions, the commission of these most serious Code Article 2.1 offences by a Participant will always attract a period of Ineligibility of at least five years and can, in appropriate cases, result in a ban up to and including a lifetime ban from the sport[[8]](#footnote-8) – such cases include those where (as here) a respondent has sought to corrupt others.[[9]](#footnote-9)
4. By way of Response Mr Zoysa submits that the gravamen of his offending lies in the totality of the conduct in charges 1 and 2: Charge 3 in effect adds little or nothing to Charge 1 since, once the offence under Charge 1 was committed (the agreement with [Mr W] to be party to an effort to fix or contrive or otherwise influence improperly the result, progress, conduct or other aspect of one or more international matches), Charge 3 (failing to report the approaches that [Mr W] and [Mr V] made to him) inevitably follows and is built into the same offence.
5. Mr Zoysa therefore submits that the Tribunal should start by asking itself how serious Mr Zoysa’s offending in Charges 1 and 2 is on the scale of offending for fixing offences and argues that Mr Zoysa’s offences fall at the lower end on the scale of seriousness for the following reasons.
	1. The case involved a form of spot fixing, namely an invitation to underperform in an unspecified way in one or more overs, not match fixing. Spot fixing is significantly less serious than match fixing; the longer periods of ineligibility and most severe sanctions should be reserved for cases of match fixing.
	2. No fix took place, nor did it come close to taking place in a cricket match. An inchoate offence, namely an agreement or attempt to commit an offence, is significantly less serious than a completed offence[[10]](#footnote-10). A completed offence will always cause much more harm to cricket, in terms of its impact on the result of the game(s) in question, the parties involved and the public’s view as to the integrity of the sport.
	3. Mr Zoysa did not profit from his conduct. He was not paid or given any reward by [Mr V] or [Mr W]. Both of them preyed on his financial vulnerability with promises of “good money”[[11]](#footnote-11), which, together with a deal of persistence and pressure[[12]](#footnote-12), ultimately wore down Mr Zoysa into, after some delay and with considerable reluctance, agreeing to do their bidding.
		1. Mr Zoysa contends that the following part of his first interview at HB page 88 was particularly telling:

*Mr Zoysa: So many things in the last few months, but I know I was tempted, to be honest, that’s why I spoke to Jeevan about this recently, this Afghan thing.*

*Q: So, you were tempted to what?*

*Mr Zoysa: As I said, we get very less money thought how much we coach, because we are the one doing so much to Sri Lankan cricket, but my salary is 2.5 lakhs (around £900), to be honest.*

*Q: For the year.*

*Mr Zoysa: Yeah, not year, monthly.*

*Q: A month, sorry, right, okay.*

*Mr Zoysa: So, we have enough expenses, but they know I'm having family, got two girls. That’s why I went and spoke to [Player B] about this Afghan thing.*

*Q: To try to make some money.*

*Mr Zoysa: Thought of. I was really scared when going. I never went and met someone in the house, you know, it’s my first time. I made a mistake.*

* + 1. Mr Zoysa also relies on the following part of his second interview at HB page 99*:*

*Q: Okay. So, did he -- how many times did he ask you about, about fixing after you’d been introduced?*

*Mr Zoysa: Every time he call, he was quite desperate for money. You know, why not doing this, there are so many things are coming. You should get some players. I said, well I can’t do that you know. Even my playing days I didn’t do. I waited, waited, waited until the last minute when I got shit.*

*Q: And then you succumbed. Okay*

And at HB page 101, where Mr Zoysa added:

*Q: Yeah. So, when you spoke to -- when you spoke to [Mr V] and he gave you [Mr W]’s number,*

*Mr Zoysa: Yeah*

Q: *Or gave [Mr W] your number, how long was it before you actually tried to get a player?*

*Mr Zoysa: I drag it for so long. Yeah --*

*Q: How long did you drag it?*

*Mr Zoysa:* *Oh, I can’t remember, I drag it, drag it. But every time when he called, he ask why, why, why. Why you are taking so much time? That time we had some matches, right. Then only poor [Player A]’s name came, right…*

* 1. It can fairly be said that Mr Zoysa was taken advantage of by others who, in the case of [Mr V], he looked up to[[13]](#footnote-13), and, in the case of both [Mr V] and [Mr W], were more experienced and savvier than him.
	2. An attempt to involve a player in fixing will often take the form of even more sinister and/or ugly conduct than that employed by [Mr V] and [Mr W] on Mr Zoysa, for example, by the use of grooming, honey traps, gifts, threats, entrapment, blackmail, etc. An early refusal to become involved in fixing will rarely be taken as the final word on the matter. Mr Zoysa’s approach to [Player A] could not have been further removed from that type of conduct: none of these features were present. This was a guileless and lacklustre enquiry of [Player A] on a single occasion, the refusal of which was accepted by Mr Zoysa without discussion, recrimination or any attempt to bring it up again, much less an attempt to change his mind[[14]](#footnote-14).

**Aggravating and mitigating factors**

1. The ICC identifies the following aggravating factors, which it submits are relevant to the Tribunal’s determination of the appropriate sanction in this case.
	1. At the time of his offending, Mr Zoysa was an experienced ex-international cricketer, who had attended a number of anti-corruption education sessions prior to his offending (most recently in 2016, the year immediately preceding his offending).[[15]](#footnote-15) In other words, he was very well aware of his anti-corruption obligations and the ICC’s efforts in respect of combatting anti-corruption, which he therefore knowingly and very seriously undermined.
	2. Mr Zoysa was at the time of his offending employed by SLC as a national team coach. As a coach, operating at the highest of levels within the sport, Mr Zoysa had a duty to act as a role model to the cricketers he was coaching.[[16]](#footnote-16)
	3. Further, because of his position with SLC, Mr Zoysa’s offending damages SLC, and has at least the potential to damage cricket more generally, not only in Sri Lanka but globally.[[17]](#footnote-17)

Focussing more specifically on the Code Article 2.1 offences:

* 1. The most serious aggravating factor of all is the attempted corruption of another, i.e., [Player A], because it is the corruption of others that serves to spread the ‘cancer’ of corruption.[[18]](#footnote-18)
	2. If [Player A] had acceded to Mr Zoysa’s corrupt approach:
		1. Mr Zoysa would have succeeded in corrupting a Participant playing at the very highest level of the sport, which would obviously serve to very seriously undermine the integrity of cricket (or at least have the obvious potential to do so);
		2. It would have been liable to destroy [Player A]’s career and reputation (as well as those of Mr Zoysa); and
		3. While there might or might not be a distinction between seriousness in respect of spot-fixing and match-fixing,[[19]](#footnote-19) the fixes proposed by Mr Zoysa, i.e., a bowler giving away a significant number of runs in an over or a batsman giving up his wicket,[[20]](#footnote-20) had the obvious potential to affect the outcome of a match.
	3. The approach made to [Player A] was clearly pre-meditated, at the behest of [Mr W] - Mr Zoysa admitted that [Mr W] had asked about [Player A] many times.[[21]](#footnote-21)
	4. Mr Zoysa sought to abuse his position of trust as coach for his own gain. The approach he made to [Player A] put [Player A] in an extremely difficult and unsettling position. ([Player B’s] evidence is that Mr Zoysa’s corrupt approach was upsetting,[[22]](#footnote-22) there is no reason to think it had anything other than an equally negative effect on [Player A], and it was certainly liable to do so).
	5. As a necessary corollary of Mr Zoysa’s denial of guilt in these proceedings,[[23]](#footnote-23) he has shown no remorse for his conduct.
	6. That lack of remorse has been compounded by the approach he has taken in these proceedings, in which he has (among other things) (i) taken (or permitted his previous counsel to take) any point possible, no matter how obviously bad,[[24]](#footnote-24) or indeed whether or not it had any basis on the available evidence,[[25]](#footnote-25) (ii) made (or permitted his previous counsel to make) very serious, highly improper and totally unsubstantiated allegations about the conduct of the ICC/ACU,[[26]](#footnote-26) and (iii) commented publicly outside of these proceedings (in breach of the Code’s provisions relating to confidentiality[[27]](#footnote-27)), including rehearsing his unsubstantiated allegations of wrongdoing – see, most notably, the video of a press conference held by Mr Zoysa and his previous counsel, uploaded to YouTube on 20 November 2020 and titled, with no apparent sense of irony, ‘Nuwan Zoysa slams ICC for fake news- Press Statement-20/11/2020 (English)’ (the content of which is every bit as absurd as the title suggests).[[28]](#footnote-28)
1. Mr Zoysa’s response is to deny that there are any aggravating factors at play in his case.
	1. Far from having a lack of remorse, per Article 6.1.1.1 as can be seen from his volunteering a full and frank confession in his interviews of 2 and 9 October 2018, Mr Zoysa’s true feelings are those of sincere remorse. In his second interview, he said this: “*I accepted my charges, whatever you know I made a mistake.*” (HB page 104). The Tribunal is asked not only to decline to find that Mr Zoysa’s is a case of a lack of remorse, but rather to give Mr Zoysa credit for his immediate admissions of guilt in interview.
	2. Regrettably, Mr Zoysa’s exemplary conduct in his interviews was undermined when (for the first time in his life) he engaged a lawyer, and he was given to believe that he had a sound legal defence to the charges. As a modestly-educated lay person, entirely reliant on the legal advice he received, and desperate to maintain his career and reputation, Mr Zoysa ought to be forgiven for acceding to that advice and contesting the charges.
	3. As a result of that legal advice, sadly Mr Zoysa was diverted from the course that would almost certainly have been available to him, and which he would have needed no encouragement to follow, namely making a prompt admission to avoid the need for a hearing in accordance with Article 5.1.12 of the Code[[29]](#footnote-29).
	4. In short, Mr Zoysa was not the instigator of the decision to contest the charges; he was relegated to the position of a follower[[30]](#footnote-30).
	5. Mr Zoysa’s current instructions to his new Counsel is that he stands by his interviews, accepts his guilt of all three charges and will not seek to appeal the Award.

**Mitigating factors**

1. The ICC notes that, during the course of his distinguished career prior to his offending, Mr Zoysa has no relevant previous disciplinary record (although this might count for little when weighed against the seriousness of his offending[[31]](#footnote-31)). Any credit that Mr Zoysa might have obtained by initially cooperating with the ACU’s investigation and/or his immediate expressions of regret and remorse has, regrettably, been entirely wiped out by his subsequent conduct.
2. Mr Zoysa’s response isto plead by reference to Article 6.1.2.1 - admission of guilt contending that when the ICC interviewed him twice in October 2018, the following things stand out in terms of his attitude and admission of guilt:
	1. Mr Zoysa co-operated fully, sought no legal assistance, surrendered his two mobile telephones, gave the correct PIN for each handset, and answered every question he was asked.
	2. Mr Zoysa clearly wished to make a clean breast of things, so much so that, in the absence of the ICC having or showing him any evidence or even making any specific allegation, he *volunteered* that he had committed the offences which the Tribunal has now found proved: “*I said the day I came I was gone when you two came to pick me. That day I realised there’s no way, most probably, you came to you know question me, that day onwards, I realised, no I'm going to tell everything possible which I know*” (HB page 102)[[32]](#footnote-32) but did them.
	3. Had Mr Zoysa not told the ICC about his conduct in relation to [Mr V], [Mr W] and [Player A], it is doubtful that the evidence of these matters would have come to light[[33]](#footnote-33). For almost a year, [Player A] did not see fit to report Mr Zoysa to the ICC until they asked him about it *after* Mr Zoysa’s interview. Even then, [Player A] did not report that the approach concerned an international match[[34]](#footnote-34). That evidence came from Mr Zoysa’s own mouth in interview[[35]](#footnote-35).
	4. Mr Zoysa intended to assist the ICC in taking action against [Mr V] and [Mr W], going so far as to show them messages from [Mr W] on his handset, thus providing them with evidence and a telephone number for him, and identifying him in a photograph that was shown to him[[36]](#footnote-36). Despite serious concerns for his own and his family’s safety (which he detailed at HB page 103-106), Mr Zoysa also agreed to give evidence against others[[37]](#footnote-37): Q: “*What we're trying to do is clean up cricket in Sri Lanka. In order to do that…*” Mr Zoysa: “*I’ll help that. Whatever I can tell you, the other day I told Mr Alex, if I hear anything, trust me, I’ll text.*” (HB page 102), “*As I promised yesterday with Mr Marshall, I'll help*” (HB page 106).
	5. Mr Zoysa expressed relief, almost pleasure, that [Player A] declined his approach: “*I said, would you like to do it. He straight away said no. That kid said no*.” (HB page 72), “*Yeah, so I was very shocked what they had mentioned his name. But it’s a lovely guy. When I even think – I think he tried -- he knew that I couldn’t talk. He straight away said no. Dasun*.” (HB page 97) Mr Zoysa’s better and true character was revealed in his anxiety that his admissions of the approach should not lead to any adverse consequences for [Player A]: “*But I’ll tell you I’m not saying anything about the boy. Straight away said he can’t.*” (HB page 74). At HB page 102, there was this extraordinary answer in Mr Zoysa’s second interview: “Q: *He did well to refuse*.” Mr Zoysa: *Damn good… He has a fantastic future. I really like him. I mean, we need match winners, we don’t have match winners, he's the only guy I think if he loses, what do you call, that shyness, he will be a good player*.”
	6. Mr Zoysa’s regular distress and emotion and need to compose himself was because of his regret of having acted as he did. By the end of the second interview, Mr Zoysa’s sorrow was palpable: *“[G]et that culprit ([Mr V]) out sir, he fucked up my life. I had a beautiful family*.” “*He fucked my life up, sure another day, he’ll fuck another one life.*” (HB page 105).
3. Mr Zoysa committed no disciplinary offences, either as a player or a coach.Article 6.1.2.2.In fact, Mr Zoysa’s record as both as a player and a coach was faultless. Therefore, these offences, being committed as they are at the relatively late age of 39 and after an unblemished career, are wholly out of character.
4. That submission is supported and underlined by the reference of [Character Referee A], [*redacted*], in which he says:

***During this 14-year association, I enjoyed Zoysa’s company as a team-mate and appreciated his obvious commitment to playing for both his Club and Country. I found him to be a genuine and friendly personality who clearly cared deeply for his team-mates and family. At no stage did I consider it might be possible for him to break ICC Anti-Corruption Rules.***

1. Clearly, Mr Zoysa’s offences did not affect the result of, or a single event within, any international match.
2. Even if the approach had been taken up and the form of underperforming spot fixing that was envisaged been successfully carried out in an international match, the potential for it to affect the result of that match was remote. Article 6.1.2.7.
3. Because of the guileless and lacklustre nature of Mr Zoysa’s approach, it is submitted that the potential of the approach being taken by [Player A] was not very high.
4. The impact of these offences on Mr Zoysa’s life, in other words the punishment he has already suffered and will continue to suffer, is enormous.
	1. All Mr Zoysa has known from a very young age is cricket. That has now been taken away him, thus denying him not only of his passion but of the only vocation that offers him a sensible chance of earning money to support himself and his family.
	2. Mr Zoysa’s journey to becoming a professional cricketer, and more recently, a coach, has been an unlikely and difficult one. (The details are set out in the Appendix).
5. In addition to the loss of a life-long cricketing vocation and the devastating past and future financial impact of these offences is Mr Zoysa’s fall from grace in the eyes of his family, friends and the public, which is a considerable punishment in its own right. His cricketing legacy is tarnished forever; he will never recover his former reputation or standing.

**Application of Code Article 6.3.2**

1. The ICC notes that Mr Zoysa has 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)’.
2. The ICC adds that Tribunals have previously observed 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,[[38]](#footnote-38) proximity is dictated by context,[[39]](#footnote-39) and the relevant context here is of the exception to the general rule that would allow the Anti-Corruption 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.[[40]](#footnote-40)
3. In the present case, 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 his agreement with [Mr W] to make a corrupt approach to [Player A], the Code Article 2.1.4 charge concerns his making of that corrupt approach, and the Code Article 2.4.4 charge concerns his failure to report any of the corrupt approaches made to him by [Mr W] and [Mr V].
4. The ICC however accepts that whether to apply Code Article 6.3.2 is a matter for the discretion of the Tribunal.
5. Mr Zoysa does not expressly address Article.6.3.2 but his contention as to the gravamen of the charges, (see para 9 above), is only consistent with a position that any periods of ineligibility imposed by way of sanction should be concurrent.

**Sanctions proposed by parties**

1. The ICC makes no specific request for sanctions other than of a period of ineligibility no lower than the minimum prescribed by the Code and for payment by Mr Zoysa of a fitting fine as well as (i) the costs in convening the Tribunal, (ii) the costs in staging the hearing, and (iii) the legal costs i.e., the costs incurred by Bird & Bird LLP.
2. Mr Zoysa invites the Tribunal to find that his is a one-off case of wholly exceptional circumstances, in which the minimum period of ineligibility of 5 years would not be just or proportionate and ought to be disapplied and a shorter period imposed. Alternatively, that the justice of this case requires that a portion of that period can be and should be suspended, alternatively, that the period should be for no longer than the minimum of 5 years[[41]](#footnote-41).
3. In support of this contention Mr Zoysa relies on Puerta v ITF in which the appellant, a tennis player, was convicted of his second doping offence and thus was liable to a specified minimum permissible period of ineligibility of 8 years. The CAS rejected that sanction as evidently and grossly disproportionate and imposed a period of ineligibility of 2 years[[42]](#footnote-42).
4. Mr Zoysa notes CAS said that there should not be *“undeserving victims* *in the fight against doping”* by adhering to a one fits all application of the rules. He comments that a similar point can be made of the need to avoid there being undeserving victims in the war against corruption in cricket and prays in aid the following Puerta sourced factors, namely that the type and scope of the most serious fixing violation in his own case was limited to a short, diffident and wholly unsuccessful approach. He argues that the individual circumstances of his case are those of a thoroughly dedicated and decent man who was and is filled with remorse, who volunteered remarkably complete and candid admissions in interview, deserving of a second chance.[[43]](#footnote-43)
5. The effect of the provisional suspension to date of 2 years 3 months has been very damaging to Mr Zoysa and his family; the effect of an extended suspension would be crippling.
6. In view of Mr Zoysa’s parlous financial position, he invites the Tribunal not to impose a fine or to make an order for costs.

**ANALYSIS**

1. The Tribunal’s understanding of the proper application of the sanctions provisions of the Code is as follows:

The Tribunal, having already decided, as a necessary precursor to any determination of an appropriate sanction, the classification of an offence under Article 2 must thereafter determine, as an exercise of judgment the “*relative seriousness of the offence”*, taking into account any relevant aggravating and mitigating factors (Code Articles 6.1.1 and 6.1.2) (which include specified factors and, any other unspecified factors[[44]](#footnote-44), that the Tribunal considers relevant and appropriate)[[45]](#footnote-45) (“*all relevant factors”*).

Th*e “relative seriousness of the offence”* is not determined exclusively by taking into account *“all relevant factors”.* The reference to *“all relevant factors”* ispreceded by the word *“including”[[46]](#footnote-46)* which suggests that other matters will affect the determination of the *“relative seriousness of the offence”.* What such other matters are or may be is not, however, expressly identified and, given the amplitude of “*all relevant factors”* there seems little space for such other matters.

Nonetheless, the Tribunal construes Article 6.1 itself to envisage some starting point of seriousness (“the starting point”) which can be increased or decreased on application of the relevant factors so affecting the period of ineligibility to be imposed by way of sanction*.* It notes that the parties themselves in their submissionsenvisage the existence of a starting point.

Article 6.1 does not itself give express guidance as to what how to determine the starting point for any Article 2 offence including an Article 2.1 corruption offence, with which the Tribunal is presently concerned, other than that for a corruption offence it would logically have to be for more than 5 years because otherwise there would never be scope for decrease by way of mitigating factors.

The range of Ineligibility for the corruption offences with which Mr Zoysa has been found guilty is prescribed by Code Article 6.2 i.e., 5 years minimum up to lifetime maximum (additionally, for each offence, the Tribunal has the discretion to impose a fine of such amount as it deems appropriate).

The approach of the English Sentencing Council reflected in other common law jurisdictions is as follows: “Most offences have Sentencing Guidelines produced by the Sentencing Council which assist Judges and Magistrates in calculating the correct sentence in a variety of circumstances. This enables them to identify the correct range of sentencing options available. Courts must follow sentencing guidelines unless they conclude that it would not be in the interests of justice to do so.”[[47]](#footnote-47) In particular as to bribery (the closest to the offence with which Mr Zoysa is charged for which Guidelines exist) the Guidelines state: “The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess culpability and harm. The level of culpability is determined by weighing up all the factors of the case to determine the offender’s role and the extent to which the offending was planned and the sophistication with which it was carried out”. Those tables include specific starting points as well as ranges. Furthermore, the tables are set out at the start so as to inform the exercise of the Court in weighing up all the factors of the case rather than as in the Code at the end.

The Tribunal recognises that the modern approach in English law[[48]](#footnote-48) to interpretation of an instrument such as the Code is to favour the purposive over the literal.[[49]](#footnote-49) It will therefore, treating Article 6.1 and 6.2 as a whole rather than disjunctively construe the table, despite its location, as being intended to inform the Tribunal entire approach to sanction. It would respectfully recommend the ICC to clarify the Code so as achieve its apparent objective i.e., to allow the Tribunal to weigh up all the factors in any particular case, both those which tell in the participants favour and those which tell against him before alighting upon an appropriate sanction within the prescribed range consistent with the Code’s objectives[[50]](#footnote-50).

In so determining the appropriate sanction in each case[[51]](#footnote-51) the Tribunal must undertake a qualitative assessment of the weight to give to each element prescribed by the Code as well as bearing in mind that the purpose of any sanction is to deter and to maintain public confidence in the sport. These must be the primary drivers of any decision.

1. The Tribunal is grateful to both parties for drawing its attention to cases, mainly, but not exclusively in the cricketing context, but observes that each case axiomatically turns on its own facts even if the underlying penal principles are constant.
2. The Tribunal accepts the ICC’s submission that offences embraced in Charges 1 and 2 go the very core of the fundamental sporting imperatives that underpin the Code and that in appropriate cases the period could mean a lifetime ban from the sport[[52]](#footnote-52) – such cases including where a participant sought to corrupt others.[[53]](#footnote-53) However it observes that 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, must therefore be a fact specific matter Another approach, equally fact specific, would be to assess how far short is the offence under consideration deserving of a life ban. The Tribunal notes that Mr Zoysa’s offences did not amount to actual fixing; nor, in the Tribunal’s view could his conduct be equated qualitatively to that which on a single occasion has attracted a lifetime ban under the Code[[54]](#footnote-54).
3. The Tribunal accepts that, though Charge 3 adds little to Charge 1 it was properly brought for its precedential and deterrence value.[[55]](#footnote-55)

1. In the Tribunal’s view, the aggravating factors in Mr Zoysa’s case were few. Mr Zoysa did display a considerable measure of remorse[[56]](#footnote-56). While Mr Zoysa’s experience and education in the Code denies him the benefit of the mitigation in Article 6.1.2.3 but is not itself an aggravating factor. While Mr Zoysa’s attempted corruption of [Player A] constitutes but it does not aggravate the Article 2.1.4 offence. While potential, and not merely actual, damage to an international match resulting from the offence can engage Article 6.1.1.4 the prospect of such damage was on the particular facts remote given the very tentative nature of his approach to [Player A].
2. The Tribunal must address the way Mr Zoysa’s defence was advanced given that the ICC relies upon it. While it takes note of the submission that the Counsel then instructed was the leader and Mr Zoysa the follower of the defence, (and doubtless exclusively so in respect of matters of law), the Tribunal would not willingly find Counsel guilty of unprofessional conduct without according him the chance to defend himself.[[57]](#footnote-57)
3. Moreover, Mr Zoysa embraced the defence, including its factual elements for which he adduced no viable evidence, whatsoever. In the case of ICC v Butt, Asif and Amir (“the Lords Trio”) the Tribunal said at para 222: “*There can be no cavilling at their use to the full of their rights under the Code to present their defence as forcefully as they* c*ould*’’ and this Tribunal would not wish to depart from that position. This does not mean, however that a Participant has absolute freedom to make any serious allegations he chooses without any evidential support, namely, as here Mr Zoysa’s allegations about the conduct of the ICC and the ACU, (e.g. collusion and tampering with evidence for which he produced no evidence whatsoever).
4. The Tribunal is persuaded that the key factors relied on by Mr Zoysa by way of mitigation are well founded. It accepts that attempts in principle under governing English law warrant lower penalties than completed acts, that Mr Zoysa did not in the end personally benefit from his offences that his approach to [Player A] was unsophisticated, and his general financial background and circumstances[[58]](#footnote-58) as set out in the Appendix made him vulnerable to corrupt approaches.
5. The Tribunal therefore concludes that the mitigating factors outweigh the aggravating factors in Mr Zoysa’s case. In its estimation overall of the relative seriousness of his offence, the Tribunal would impose 6-year periods of ineligibility for each of the charges 1 & 2, and 6 months for Charge 3.
6. The Tribunal knows of no precedent for imposing a period of ineligibility less than the minimum (the minimum itself has the merit of certainty)**.** The Tribunal in the Lords Trio case were highly sympathetic to Mr Amir but while it reserved its position on whether or not the 5-year minimum (which has the merit of certainty) could ever be disapplied on the grounds that it was disproportionate declined to disapply it in his case. There can be no read across from Puerta to Mr Zoysa’s case. The Tribunal refers to, what its predecessor said in the Lord Trio case at para 208[[59]](#footnote-59).
7. As to whether the periods of ineligibility should run consecutively or concurrently- options envisaged by Article 6.3.2 - where two of more offences **relate***“to the same incident or set of facts”* the Tribunal prefaces its conclusion with these observations. Failure to report is a gateway offence that serves as a deterrent. It was entirely conceivable that Mr Zoysa could have been convicted of that ‘failure to report’ offence and not of the ‘fixing’ offence. But, as the ICC accept, the Tribunal has an overriding discretion as to whether to order sentences for separate offences to run concurrently or consecutively, and considers that in this case, whether or not the offences strictly related to the same incident or set of facts the links between them are such that the sentences should run concurrently[[60]](#footnote-60).

Suspension

1. The Tribunal accepts that it has power to suspend a period of ineligibility above the minimum period prescribed by the Code but sees no basis for so doing given that the particular circumstances of Mr Zoysa’s case have already led it to impose a period of ineligibility close to the prescribed minimum.

Fine

1. The Tribunal will not impose a fine. The ICC has not advanced any particular grounds to show that a fine is required in addition to a period of ineligibility and Mr Zoysa made no profit from his offences.

Costs

1. The Tribunal declines to make an order for costs not because in principle it is not appropriate but because, given the facts set out in the Appendix, it would serve no useful purpose. It also relies *mutatis mutandis* on paragraph 45 above.

**Dissenting opinion of Simon Copleston**

1. This opinion is provided in the matter of proceedings brought under the ICC Anti-Corruption Code against Mr Nuwan Zoysa.
2. I have read the draft award on sanctions prepared by my fellow tribunal members. I am in agreement with their views on most points. But I disagree with their analysis in two respects, as set out below.
3. I disagree with the comments made in paragraph 38 onwards of the draft award. I would make no negative inferences on Mr Zoysa because of the defence brought on his behalf. To me, the true meaning of liberty is “freedom from constraint”. My colleagues, in their criticism of Mr Zoysa, a cricketer by nature and likely unused to dealing with legal proceedings or legal counsel, for not controlling his lawyers or accepting their advice, and in their implicit criticism of his counsel, have (a) placed an unfair burden on a cricketer such as Mr Zoysa to control the professionals that he engaged to help him, and (b) more concerningly, engaged (in so far as others may wish to follow) in the recent deplorable progressive trend of “de-platforming”. “De-platforming” represents a dangerous threat to freedom of speech, a cornerstone of civil liberty:

“Restriction of free thought and free speech is the most dangerous of all subversions” Supreme Court Justice William O. Douglas.

“What is freedom of expression? Without the freedom to offend, it ceases to exist.” Salman Rushdie.

In my capacity as a Tribunal member I do not believe, based on the evidence before me, that Mr Richardson acted in anything other than a proper manner in investigating this case. Neither do I see any evidence of improper behaviour on the part of ICC or Sri Lanka Cricket. The evidence presented against them is thin at best. However, if any of the parties involved or referred to do indeed feel unduly offended by matters raised, they should be aware that the counsel involved have professional and ethical obligations as part of their membership of Bar or other counsel associations or regulators; the proper channel for expression of any concerns or complaints is to those associations or regulators. Furthermore, neither I nor (I assume) the other Tribunal members, have any in depth knowledge of how legal arguments are routinely crafted and presented in Sri Lanka; there is no reason for us to apply Western standards, and to consider them superior, in this case or in any other cases. Furthermore, we have no knowledge as to whether Mr Zoysa’s lawyers ever advised him that their advocated defence may end up aggravating the sanctions ultimately made against him (I suspect that this advice was not provided, and I am not sure that we should expect that it should have been provided).

1. This Tribunal’s role is to make an objective decision based on the facts put before it, and not to comment further. My colleagues may also be confusing the nature of the ICC Tribunal as convened (on the basis of contractual relationships) with the separate and distinct roles of court appointed judiciary, who often hold developed powers to make such comments and to control the manner in which evidence is placed before them. In this case, and in my view, it would have been preferable if, before publishing their views (as set out in paragraph 38), the majority had properly tested their understanding of the meaning of liberty. As Justice Scalia said, “Closing debate closes minds.”
2. There is a deep and serious issue behind these points: The ICC Tribunal will, no doubt, continue to hear cases in which the defendants (a) often hail from the less affluent cricketing nations in emerging markets, and (b) lack means to hire top law firms to represent them. The Tribunal should not seek to create a precedent which prevents defendants from putting forward their arguments in defence; arguments will often be supported by limited or tenuous evidence – *this does not mean that those arguments are not correct, or that they should not be presented.* The majority decision in this case will create unnecessary doubt in defendants’ minds over this issue. In circumstances where the career, reputation and livelihood of a defendant are at stake, he or she should have full rein to speak freely.
3. This issue may not have troubled me so deeply if it were not for the activities of the Tribunal in the run up to publication of my initial dissenting opinion in another similar case in January. I hold a genuine and empirical belief that certain firm steps were taken to prevent the publication of that opinion (which is now the subject of an appeal to CAS), and that certain other steps were taken with the hope of either persuading me or others that my opinion would or should never “see the light of day”. This was “de-platforming” in the same vein as above, and the two instances of it in similar and contemporary cases are deeply concerning. I have several other comments to make on the manner in which the Tribunal has operated, particularly the role of the chairman and the decision-making process, and the free flow of ideas and opinions, but these are less relevant in this context and I will make them direct to the ICC and the chairman.
4. I shall leave the last words on this point for Shakespeare (King Lear): “Speak what we feel, not what we ought to say”.
5. The other point on which I disagree with the majority view on sanctions is the length of the sanction (or, more specifically, the length of Mr Zoysa’s ban from cricketing activities). I do not doubt or disagree with the Tribunal’s decision that Mr Zoysa committed the offences specified under the Code. However, Mr Zoysa was a rather uncommitted and inept match fixer, at best. His only attempts to engage in match fixing ended up in miserable failure. He only made those attempts following (in his own admission) a deep personal struggle, and to support his wife and children. In my view, Mr Zoysa has shown genuine remorse; the process he has been subjected to, and the length of his ban, has been sufficient. My colleagues appear to misunderstand the application of the term ‘restraint of trade’: Here it is relevant (not in the definition of Participant). In my view, Mr Zoysa’s period of ban should be suspended from either June 2021 or December 2021 and he should be permitted to resume his coaching activities and exercise the means he has available to him to support his family. “To err is human, to forgive is divine”, Alexander Pope.

**CONCLUSION**

1. For the above reasons, the Tribunal by a majority:
	* + - 1. Imposes a period of ineligibility of 6 years, starting, pursuant to Article 6.4 of the Code, as from 31 October 2018 being the date of his provisional suspension. That period will therefore end on 31 October 2024.

Declines to impose a fine.

Declines to make a costs order.

**Michael J Beloff QC**

**Simon CG Copleston Solicitor of the Supreme Court of England and Wales**

**The Honourable Justice Winston Anderson**

**7 April 2021**

**APPENDIX**

* + - 1. Mr Zoysa was born into a working-class family; the youngest of five boys. His father earned a modest income as a salaried plumber, and he passed away when Mr Zoysa was just 10 years old. As a consequence, Mr Zoysa’s mother went to work as a housekeeper in Kuwait to financially support the family and his eldest brother commenced employment in Sri Lanka and took over the responsibility of bringing up his four younger siblings.
			2. Mr Zoysa, who started playing cricket in the garden and local streets at the age of 6 or 7, initially attended a basic state school in Colombo, which was insufficiently well-off to host any sports. However, an older brother was given a scholarship to a larger state school, the equivalent of a grammar school in the UK. Partly because of his cricketing abilities, Mr Zoysa was also admitted to that school, where he completed his O-levels[[61]](#footnote-61). It was here that Mr Zoysa’s cricketing talent was more fully recognised and developed.
			3. In 1996/97, aged just 17, Mr Zoysa made his first-class debut. On 7 March 1997, aged just 18, he made his test debut for Sri Lanka. In a country where income, class, and the school one attended are all-important to life chances, including in sport, these are impressive achievements.
			4. Over the course of the next 10 years, Mr Zoysa played 30 test matches and 95 one-day internationals (‘ODI’) for Sri Lanka, albeit, largely because of frequent injury[[62]](#footnote-62), he was not a permanent member of the team.
			5. Early in Mr Zoysa’s playing days, his eldest brother, who had effectively brought him up, [*redacted]*. From that time to the present day, Mr Zoysa took responsibility for the care of his brother.
			6. In July 2004, aged 26, Mr Zoysa played his last test match. On 8 February 2007, aged 28, he played his last ODI.
			7. Mr Zoysa’s earnings as a cricketer in domestic and international cricket were not high. During his long periods of lay off through injury, he would earn nothing. Mr Zoysa estimates that, averaging it out across the decade of 1997 to 2007 in which he played for Sri Lanka, he earned around £[*redacted*] per month. Any money left over after attending to his living expenses was not saved but largely spent on the needs of his mother and brothers.
			8. In 2007, Mr Zoysa played a single season of the Indian Premier League (‘IPL’), for which he was paid the equivalent of around £[*redacted*], 40% of which went to his manager and in taxes. Thereafter, he played domestic cricket until 2011. During these four years, Mr Zoysa was surviving largely on his IPL earnings.
			9. As a consequence, Mr Zoysa retired from cricket as a player far from financially secure.
			10. Mr Zoysa has diligently had to build his coaching career; like his playing career, doing things without patronage, favour or other advantage. He started with a school in Colombo, moved to a domestic team in Sri Lanka, following which he spent two years in India with the Goa Cricket Association before, on 1 October 2015, being appointed as assistant fast bowling coach with Sri Lanka Cricket’s national fast bowling coaching department.
			11. Mr Zoysa’s approximate monthly earnings as a coach have been as follows: the school, £[*redacted*], the domestic team, £[*redacted*], Goa, £[*redacted*] before tax, and Sri Lanka cricket, around £[*redacted*] plus expenses.
			12. Again, these are not the sort of earnings that could offer Mr Zoysa any real financial security.
			13. Mr Zoysa is married with two daughters, aged 14 and 11, for whom schooling and further education fees, in a country offering a very basic state education, have to be found for the next decade. In addition to having the ongoing care of his [redacted] eldest brother, his mother-in-law, [*redacted*] lives with and is financially dependent on him.
			14. Mr Zoysa has been provisionally suspended since he was charged on 31 October 2018. Therefore, he has now been suspended for the last 2 years and 3 months.
			15. In that time, Mr Zoysa has been unable to obtain an income because, firstly, all he has ever done in his life has been connected to cricket – he is not qualified or skilled at anything else - and secondly, the last year has been dominated and affected by the Covid-19 pandemic.
			16. Since his suspension, Mr Zoysa has tried, without much success, to do some private tutoring and his wife now works as a secretary in an IT company, earning around £[*redacted*] per month.
			17. Mr Zoysa’s few savings have long since been spent. To make ends meet, the family’s vehicle has been sold, as has his wife’s parents’ house, in which Mr Zoysa and his wife had planned to live during their retirement years.
			18. The family now has bills and loans to pay, which they are struggling to manage[[63]](#footnote-63).
1. Having announced its findings on 9th November 2020. [↑](#footnote-ref-1)
2. References below to 'HB tab' are references to the Hearing Bundle. [↑](#footnote-ref-2)
3. Liability Award, paragraph 13. [↑](#footnote-ref-3)
4. 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 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’. [↑](#footnote-ref-4)
5. 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), 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)’). [↑](#footnote-ref-5)
6. See e.g., in relation to the point of principle, Bolton v Law Society [1994] 1 W.L.R. 512 (, at para 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 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 (both as quoted in the footnote immediately above). [↑](#footnote-ref-6)
7. See Code Article 1.1.5. [↑](#footnote-ref-7)
8. 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 applicable, *mutatis mutandis*, to the Code). [↑](#footnote-ref-8)
9. 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. [↑](#footnote-ref-9)
10. As per sentencing criminal cases in English law. For example, see Attorney General’s Reference No 24 of 2002 (R v Everett) [2004] EWCA Crim 844, in which an application was made by the Crown for leave to refer as unduly lenient a sentence of 8 years’ imprisonment for conspiracy to import between 6 and 10 tonnes of cannabis, with a value of £8-11m, into the UK. The maximum sentence was 14 years. Kay L.J. said (at para. 5) “… *despite the persistence of the conspirators, there was in fact no evidence at all of any successful importation. This resulted from a number of unforeseen events thwarting their plans...*”

Having reviewed the aggravating and mitigating features of the case (at para. 41) the court observed that nowhere in the Attorney General’s reference was any comment made on the fact that none of the drugs actually reached the UK. Nor did any of the sentencing authorities referred to deal with a situation where there was no successful importation at all. Kay L.J. said (at para. 42): “*It seems to us that is an important factor in a case of this kind. It is a clearly established principle that sentences for attempt are much less than sentences where the completed offence has been committed. This of course was a conspiracy, but it was not a successful conspiracy; it was an unsuccessful one, and it seems to us there is no reason why similar principles should not apply. That, it seems to us, was an important factor that ought to have been recognised, and, we anticipate, was recognised by the learned judge.*” [↑](#footnote-ref-10)
11. “*He said, sir, that he can give good money. That's his word*.” (HB page 73). [↑](#footnote-ref-11)
12. “*He asked about [Player A] many times*” (HB page 70), “*During that time, he pleaded me to get him, get him, get him, so eventually I went and asked*” (HB page 71). [↑](#footnote-ref-12)
13. [*redacted*]. [↑](#footnote-ref-13)
14. [Player A]’s witness statement, at para. 16: “*When I turned Mr Zoysa’s offer down, he simply said “okay” and it was not mentioned again*.” (HB page 109). [↑](#footnote-ref-14)
15. See education sessions at HB tab 1, in relation to sessions held on 11 July 2005, 9 August 2012, and 9 March 2016. [↑](#footnote-ref-15)
16. See, e.g., by analogy, IAAF v ARAF and Mokhnev, CAS 2016/O/4504, CAS award dated 23 December 2016 (, in which a coach was found to have committed multiple anti-doping rule violations over a period of time, including providing multiple athletes with prohibited substances (at paragraph 144) (‘[A]thlete support personnel in general bears an even higher responsibility than athletes themselves in respect of doping considering the influence they usually exert on their athletes. Indeed, in an AAA arbitration, the panel reasoned that *“*[t]*he cases are clear that athlete support personnel owe a higher duty to the integrity of the anti-doping system than even do athletes. The athlete support personnel suspensions are generally far more severe than those for athletes because of the position of trust and commitment to integrity expected of athlete support personnel”.* (USADA v. Block, AAA No. 77 190 00154 10 (2011), para. 119)’). See also (in the cricket anti-corruption context) Butt v ICC, CAS 2011/A/2364 (, award dated 17 April 2013, para 74 (sanction imposed on Salman Butt 'could reasonably be described as lenient, given that Mr Butt was captain of the Pakistan Test Match cricket team at the time and he had a responsibility as role model…') and ICC v Ansari, Award dated 19 February 2019 (, at paragraph 7.24.2 (‘In his position as a coach, and particularly in his capacity as an age-group level coach, Mr Ansari should have acted at all times as a role model’). [↑](#footnote-ref-16)
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). [↑](#footnote-ref-17)
18. See, e.g., Savic v PTIOs CAS 2011/A/2621. [↑](#footnote-ref-18)
19. See WPBSA v Lee, a Disciplinary Panel decision (on sanction and costs) dated 24 September 2013 (a snooker case), para 6 ('The damage to the sporting integrity of a contest is clear if the end result is fixed. But there is also damage to the sporting integrity of a contest if even part of it is not played honestly without affecting the end result. Participants, spectators and television audiences are entitled to see the entire contest played out with both sides trying their best. Furthermore, it may often not be possible to engage in such "spotfixing" without at least the potential for the end result to be affected … [7] It is therefore essential that sanction is indeed sufficient to deter others from match-fixing and spot-fixing'). [↑](#footnote-ref-19)
20. Liability Award, paragraph 4.1.8. [↑](#footnote-ref-20)
21. Liability Award, paragraph 4.1.7. [↑](#footnote-ref-21)
22. HB tab 9, para 11. [↑](#footnote-ref-22)
23. Mr Zoysa admitted the charge under Code Article 2.4.4, subject to his jurisdiction arguments. [↑](#footnote-ref-23)
24. See, e.g., Liability Award, paragraph 7 (the ‘Afghanistan’ point). [↑](#footnote-ref-24)
25. See, e.g., Liability Award, paragraphs 9 (the ‘career opportunities’ point), 10 (the ‘hypothetical discussions’ point), and 12 (iii) (the ‘no interpreter’ point) (and each of the points in the footnote immediately below). [↑](#footnote-ref-25)
26. See, e.g., Liability Award, paragraphs 6 (the ‘collusion’ point), 12(i) (the ‘doctoring’ point), and 12(iv) (the ‘oppression’ point). [↑](#footnote-ref-26)
27. Code Article 5.1.7 and Code Article 8. [↑](#footnote-ref-27)
28. See [https://m.youtube.com/watch?feature=youtu.be&v=rOn\_mofdMuE](file:///C%3A%5CUsers%5CRWBB%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CK1U4BIND%5C%C2%A0https%3A%5Cm.youtube.com%5Cwatch%3Ffeature%3Dyoutu.be%26v%3DrOn_mofdMuE). Parts of the press conference were reported in the media, e.g., The Island Online, ‘Nuwan Zoysa cries foul over ICC statement’, 21 November 2020, available at https://island.lk/nuwan-zoysa-cries-foul-over-icc-statement/ (‘“It was a shock for me when I was made aware that ICC had gone on to release a press statement yesterday saying that I have been found guilty of charges which were never committed by me. I reiterate that the ICC Tribunal is yet to release the final verdict and its reasons to me or my counsel. Therefore it is a fallacious and a cheap gimmick by ICC to tarnish my reputation and the reputation of my beloved country,” said Zoysa reading a statement. He alleged that he was harassed and humiliated in the name of investigations when he was at the High Performance Centre at the R. Premadasa Stadium in October 2018. He said that he lost his livelihood in 2018 due to the investigations and he had been left with no income to look after his family. “The ICC hearing concluded on September 18. It was evident during the hearing that all evidence were in my favour. According to the ICC Anti-Corruption Code, the decision should be announced within 30 days but the tribunal failed to announce the decision within the time frame. Therefore I instructed my counsel to write to ICC. We were then informed that the final decision will be announced with reasons only after looking into further submissions in another cricketer’s matter which is being heard along with my case.” Warnasuriya said that the ICC anti-corruption unit was finding it difficult to prove their 2018 proclamation that Sri Lanka was the most corrupt cricket playing nation in the world and was now hell-bent on proving that they were correct. “They were trying to use statements which they forcefully obtained from Zoysa without even giving him his choice of language during the initial inquiry conducted in 2018,” said Warnasuriya’). [↑](#footnote-ref-28)
29. Notwithstanding any of the other provisions of this *Anti-Corruption Code*, at any time during the proceedings it shall be open to a *Participant* charged with breach(es) of the *Anti-Corruption Code* to admit the breach(es) charged, whether or not in exchange for an agreement with the *ICC* on the appropriate sanction to be imposed upon him/her in order to avoid the need for a hearing before the *Anti-Corruption Tribunal*. Any such discussions between the *ICC* and the *Participant* shall take place on a “without prejudice” basis and in such a manner that they shall not delay or in any other way interfere with the proceedings. Any resulting agreement shall be evidenced in writing, signed by both the *ICC’s General Counsel* and the *Participant*, and shall set out the sanction imposed on the *Participant* for his/her breach of the *Anti-Corruption Code* (the “Agreed Sanction”). In determining the Agreed Sanction the *ICC* will have due regard to the range of sanctions set out in Article 6.2 for the offence(s) in question, but it shall not be bound to impose a sanction within that range where it reasonably considers (at its absolute discretion) that there is good reason to depart therefrom. [↑](#footnote-ref-29)
30. By way of an illustration of our submissions on this point, the Tribunal must have noticed the remarkable similarity between the Response to the Charge Sheet submitted on 13 November 2018 (HB page 122), drafted by his legal team, and Mr Zoysa’s Affidavit of the same date (HB page 128). [↑](#footnote-ref-30)
31. 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 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'). [↑](#footnote-ref-31)
32. Had Mr Zoysa done as some *Participants* before him have chosen to do and declined to answer questions in interview and refused to cooperate with any proceedings brought against him, thus committing an offence under Article 2.4.8 of the Code, the *maximum* period of ineligibility he would have faced is 5 years. [↑](#footnote-ref-32)
33. It is right to say that *before* the interviews, [Player B] reported Mr Zoysa’s approach to the ICC, however if Mr Zoysa had denied that conduct, even made a confession to that conduct alone, because it concerned a tournament in Afghanistan, whose Anti-Corruption Code was not then in force, the ICC could have taken no disciplinary action in relation to it. [↑](#footnote-ref-33)
34. [Player A]’s witness statement, at para. 15: “*Mr Zoysa told me he could introduce me to someone if I wanted to become involved*.” (HB page 109). [↑](#footnote-ref-34)
35. Mr Zoysa: “*Actually he told me to get him for I think Zimbabwe or Bangladesh, if I’m correct. It’s just a*

*conversation with us*.” Q: “*Okay, so Zimbabwe and Bangladesh were in the summer of last year.*” Mr Zoysa: “*I think Bangladesh, if I'm correct, Bangladesh. That’s the game he scored some runs as well, Dasun*.” Q: “*Okay. So, it was in an international series*.” Mr Zoysa: “*Yeah*.” (HB page 73). [↑](#footnote-ref-35)
36. HB pages 83 and 85. [↑](#footnote-ref-36)
37. Q: “*Nuwan, do you remember we’ve talked to you about -- we've said at the start that sometimes these interviews can be used to charge or to go to a case against somebody else. In order to do that, we sometimes require people to stand up and say what they know*.” Mr Zoysa: “*Yeah*.” Q: “*Okay? And there might come a time when we need you to do that.*” A: “*Yeah, yeah.*” Q: “*Yeah?*” Mr Zoysa: “*Of course, yes.*” (HB page 102). [↑](#footnote-ref-37)
38. Code Article 11.5. [↑](#footnote-ref-38)
39. See, for example, Svenska Petroleum Exploration AB v Lithuania [2006] EWCA Civ 1529, at para 137. [↑](#footnote-ref-39)
40. 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. [↑](#footnote-ref-40)
41. As the ICC Anti-Corruption Tribunal said in ICC v Butt, Asif and Amir, at para. 215: “In keeping with the ICC’s resolve to deal firmly with the scourge of corruption, a phenomenon not confined to the sport of cricket, but one for which in the context of cricket, they have a special responsibility, the minimum period prescribed is severe indeed. A five year ban already results in heavy denunciation for the players and sends out an unmistakable warning or deterrent to others who might be tempted to engage in corrupt practices.” And at para. 216: “… a five-year ban is far from being alight penalty a mere slap on the wrist. The scale starts with a severe penalty and moves up to reach an extremely severe one.” [↑](#footnote-ref-41)
42. Mr Zoysa quotes extensively from the CAS decision. [↑](#footnote-ref-42)
43. As [Character Referee A] put it in his reference: … *having known him well over such a long period, I can only conclude that this was a gross error of judgement, possibly driven by desperation during a difficult time post his playing retirement. I have no doubt that he deeply regrets his actions now and will want to make amends in the future.* [↑](#footnote-ref-43)
44. Article 6.1.1 8 (aggravating) Article 6.1.2.10 (mitigating). [↑](#footnote-ref-44)
45. 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. [↑](#footnote-ref-45)
46. A word which ordinarily enlarges rather than exhausts the meaning of words to which it is applied Taylor v ITCITT 1967 1 AC 1. [↑](#footnote-ref-46)
47. See too the discussion in Teerath Persaud v The Queen CCJ Appeal no BB CR 2017/001 at paras 43-48 especially para 48 per The Honourable Justice Winston Anderson:

*Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender. Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point. Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. ....* [↑](#footnote-ref-47)
48. Which governs the Code, Article 11.5. [↑](#footnote-ref-48)
49. Minera Las Bambas SA v Glencore Queensland Ltd [2019] EWCA Civ 972 (per Leggatt LJ at para 20). [↑](#footnote-ref-49)
50. An alternative model is the World Anti-Doping Code provides in Article 10 a sanctions starting point in terms of specified periods of ineligibility for the more serious anti-doping rule violations and then allows for the possible reduction or elimination of such periods in circumstances also provided for. [↑](#footnote-ref-50)
51. See ICC v Ahmed, Ahmed and Amjad, Award dated 26 August 2019, para 9. [↑](#footnote-ref-51)
52. 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). [↑](#footnote-ref-52)
53. 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. [↑](#footnote-ref-53)
54. I.e. ICC v Ahmed Ahmed and Ahmed cit. sup. fn 14. [↑](#footnote-ref-54)
55. The Tribunal accepts that no greater sanction will be imposed upon Mr Zoysa for his approach to [Player B] which formed part of the evidence in order to establish Mr Zoysa’s guilt of the three charges (in particular, charge 2) but was not the subject of its own charge. [↑](#footnote-ref-55)
56. See *supra*. [↑](#footnote-ref-56)
57. Issues of legal professional privilege are also engaged. [↑](#footnote-ref-57)
58. There were not formally in evidence, but the Tribunal will accept them when advanced on instructions by experienced Queen’s Counsel. [↑](#footnote-ref-58)
59. “*Puerta for obvious reasons provide no compelling precedent for us, where the players’ breach of the Code was not inadvertent but deliberate, and the need for an effective deterrent against conscious corrupt behaviour is as important as the need for such a deterrent against doping. We do not need accordingly to consider whether there might be wholly exceptional circumstances in which a full-frontal assault upon the minimum limit might succeed. Suffice to say that on any view this is not such a case”*. [↑](#footnote-ref-59)
60. There is a separate issue of prosecutorial discretion as to when to ‘charge after’ a participant for failure to report. to which the Tribunal suggests that the ICC gives further consideration to ensure a fair and consistent approach, and to avoid even the impression of ‘a deal’ which would raise concomitant issues of reliability of evidence. [↑](#footnote-ref-60)
61. He took 8 O-levels, passing four with a B grade, three with a C grade, and failing one. [↑](#footnote-ref-61)
62. He suffered a large stress fracture in his back, which took him out of action for 9 months. He also had two knee surgeries, which put him out for 4 and 6 months respectively, and ankle surgery. [↑](#footnote-ref-62)
63. So that there is no speculation about it, new counsel inform the Tribunal that they are acting *pro bono* for Mr Zoysa. [↑](#footnote-ref-63)