



**Arbitration CAS 2011/A/2362 Mohammad Asif v. International Cricket Council (ICC), award of 17 April 2013**

Panel: Mr Graeme Mew (Canada), President; Mr Romano Subiotto QC (United Kingdom); His Honour James Robert Reid QC (United Kingdom)

*Cricket*

*Match fixing*

*Full power of review of a CAS Panel and Article 6 of the European Convention on Human Rights*

*Relation between Article 7.3.2 of the ICC Code and Article R57 of the CAS Code*

*Breach of Article 2.1.1 of the ICC Code in case of absence of financial gain*

1. Article R57 of the CAS Code confers upon CAS panels full power to review the facts and the law. Furthermore, according to the jurisprudence of the European Court on Human Rights, where a party has access to a court with full judicial review jurisdiction (including on the merits), the administrative decision of a competition authority is not in breach of Article 6 of the European Convention on Human Rights.
2. Article 7.3.2 of the ICC Code permits a CAS panel to conduct a *de novo* hearing only where required to do so “in order to do justice” and limits the scope of review to the consideration of whether the decision being appealed was erroneous. There is no tension between said provision and Article R57 of the CAS Code in cases where the applicant requests such review, for example because s/he feels that the interests of justice have not been served as a result of due process violations.
3. An infringement of Article 2.1.1 of the ICC Code does not require a player to gain financially. The question to be answered is whether the player fixed, contrived in any way, influenced improperly, or was a party to any effort to fix, contrive in any way, or influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event. In other words, a player who is involved in a fix breaches Article 2.1.1 notwithstanding that he does not benefit financially from doing so.

**I. PARTIES**

1. The International Cricket Council (the “ICC”) is the international governing body for cricket. It is responsible for the organisation and governance of cricket’s major international tournaments, including Test Matches. The ICC enforces an Anti-Corruption Code for Players (the “ICC Code”).

2. Mr Mohammad Asif is a Pakistani national and fast-medium bowler, who played for Pakistan's international cricket team between 2005 and 2010. Mr Asif was selected to play and did play in a Test Match for Pakistan against England, which took place between August 26 to August 29, 2010 at Lord's Cricket Ground (the "Lord's Test").

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

3. The relevant facts and allegations based on the parties' written submissions, pleadings, and evidence adduced at the hearing are summarised below. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. In the summer of 2010, Mazhar Mahmood, an undercover reporter for a newspaper, the News of the World (the "NoTW"), posed as Mohsin Khan ("Mr Khan"), a representative of a betting syndicate, in order to befriend Mazhar Majeed, a U.K. national of Pakistani descent and agent to certain Pakistani cricketers (including Mr Salman Butt, then Captain of the Pakistani cricket team).
5. Messrs Khan and Majeed met on the evening of August 25, 2010 at the Copthorne Tara Hotel in West London. During that meeting, Mr Khan paid Mr Majeed £140,000 as a deposit to be drawn down over time in exchange for future inside information about fixes involving the Pakistan cricket team (this amount was in addition to £10,000, which Mr Khan had previously paid to Mr Majeed for information about a spot fix that did not ultimately transpire; that spot fix is not considered further in this Award).
6. In order to give Mr Khan (and his fictional syndicate) confidence in his ability to provide inside information, Mr Majeed provided Mr Khan with information on three "no balls" that would be bowled in the Lord's Test which was due to begin the following day.
7. In cricket a "no ball" is a penalty against the fielding team, usually as a result of an illegal delivery by the bowler. The delivery of a no ball results in one run being added to the batting team's score, and an additional ball must be bowled. In addition, the number of ways in which the batsman can be given out is reduced.
8. According to Law 24(5) of the MCC Laws of Cricket, a "no ball" is not a fair delivery. For a delivery to be fair in respect of the feet, in the delivery stride (a) the bowler's back foot must land within and not touching the return crease appertaining to his stated mode of delivery; (b) the bowler's front foot must land with some part of the foot, whether grounded or raised; (i) on the same side of the imaginary line joining the two middle stumps as the return crease

described in (a) above and (ii) behind the popping crease. If the bowler's end umpire is not satisfied that all of these three conditions have been met, he shall call and signal "No ball".

9. The money given to Mr Majeed was not in consideration for the information given to Mr Khan about the Lord's Test. Mr Majeed explained that the three "no balls" were to be bowled by Mohammad Amir (two) and Mohammad Asif (one) as follows:
  - Mr Amir would bowl a "no ball" on the first ball of the third over;
  - Mr Asif would bowl a "no ball" on the sixth ball of the tenth over; and
  - Mr Amir would bowl a "no ball" on the last ball of the first over he bowled to a right handed batsman (which would be bowled from around the wicket).
10. The odds of estimating this exact sequence of events correctly are estimated (subject to certain caveats and assumptions) by an eminent cricket statistician (Frank Duckworth) to be 512,000 to 1.
11. On August 26, 2010, Pakistan won the toss and put England into bat. Messrs Amir and Asif opened the bowling for Pakistan. As indicated by Mr Majeed the previous night, Amir bowled a "no ball" on the first ball of the third over and Mr Asif bowled a "no ball" on the sixth ball of the tenth over.
12. Rain curtailed play on August 26, 2010, so the third "no ball" could not be bowled as scheduled. That night Mr Majeed instructed Mr Amir to bowl the third "no ball" on the third delivery of his third full over the following morning (*i.e.*, on the third delivery of the third over after he had completed the over from August 26, 2010, which had been stopped by rain). On August 27, 2010, Mr Amir bowled a "no ball" on the third ball of his third full over.
13. On August 29, 2010, the NoTW published a story that elements of the Lords Test Match had been fixed. The story included narrative, video, and audio recordings of the discussions between Messrs Majeed and Khan.
14. On September 2, 2010, the ICC charged Mr Asif (and Messrs Amir and Butt) with several breaches of the ICC Code, including breach of Article 2.1.1, which provides that:
 

*"Fixing or contriving in any way or otherwise influencing improperly, or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event ... shall amount to an offence by such Participant under the Anti-Corruption Code".*
15. The ICC also suspended Mr Asif from playing international cricket pending determination of the charges. The suspension was not challenged by Mr Asif.
16. Thereafter, the Chairman of the ICC Code of Conduct Commission (the Honourable Michael J. Beloff QC) convened a tribunal consisting of himself (as Chairman) Justice Albie Sachs, and

Mr Sharad Rao (the “Tribunal”) to hear the matter and make a determination as to whether the charges were made out.

## **B. Proceedings before the ICC Tribunal**

17. On December 23, 2010, the Tribunal rejected an application made by Mr Butt to stay the Tribunal proceedings pending a decision by the U.K. Crown Prosecution Service as to whether to charge the players with criminal offences. This application was opposed by Mr Asif.
18. The Tribunal heard the matter in January 2011 (between January 6 and January 11) and rendered its determination on February 5, 2011 (the “Determination”). It found that if the Tribunal upheld the charge against Mr Asif under Article 2.1.1 of the ICC Code, it would not need to consider any further charges brought against him in relation to the Lords’ Test. It further held that *“the Article 2.1.1 charge against Mr Mohammad Asif arising from Mr Mohammad Asif agreeing to bowl and bowling a deliberate no ball during the first day of the Lords test played between Pakistan and England from 26<sup>th</sup> to 29th August, 2010 was proved beyond reasonable doubt”*.
19. In reaching its Determination, the Tribunal held that the NoTW recordings were authentic and that the cause of the coincidence between Mr Majeed’s predictions of the timing of the no ball and their actual occurrence was a result of inside information. It also held that the Players, including Mr Asif, provided the inside information to Mr Majeed (*i.e.*, Mr Asif was involved in the fix). This reflected *inter alia* the following factors:
  - The calls made to and between Mr Majeed and Mr Asif as revealed in the phone records fitted into a pattern consistent with the interchanges between Mr Majeed and Mr Khan and there was no cogent explanation of why Mr Majeed should be in contact with Mr Asif at such hours during important test matches if the object was simply to deal with commercial or social matters.
  - Although there was relatively less direct contact between Messrs Majeed and Asif (the telephone and text traffic was less prevalent than between Mr Majeed and Messrs Butt and Amir), given that Mr Butt was, as the Tribunal found, the “ring master”, it would be unnecessary for there to be direct contact between Mr Majeed and Mr Asif. In any event, there was evidence that at critical points Mr Butt was in direct contact with Mr Asif.
  - In a police interview, Mr Asif underestimated the frequency of his contacts with Mr Majeed.
  - Mr Asif’s explanation of the cause of the “no ball” (an instruction by his Captain, Mr Butt, to “run faster, do it” which disrupted his rhythm) was not advanced until his opening brief to the Tribunal. Mr Asif did not advance this explanation during his police interview on September 3, 2010, and instead cited the cause of the “no ball” as accidental, potentially due to conditions.

- It was by no means established that Mr Butt said anything significant to Mr Asif before the “no ball”. Mr Butt denied that he told Mr Asif to “*run faster, do it*” and disputes offering Mr Asif anything but encouragement between balls. The instruction to “*run faster, do it*” made little sense in the context of the game – running faster would have disrupted his discipline rather than enhancing the chance of a wicket.
  - The “no ball” was obvious and substantial and was bowled by a player who was not prone to bowling “no balls” (the Tribunal accepted evidence that he bowled one in every ninety balls bowled). Accordingly, the likelihood of Mr Majeed simply guessing correctly and expressing that guess with confidence to Mr Khan was not substantial.
20. The Tribunal imposed on Mr Asif a sanction of seven years ineligibility, two years of which were suspended on condition that he commits no further breach of the ICC Code and that he participates under the auspices of the Pakistan Cricket Board in a programme of Anti-Corruption education.

### **C. Proceedings before the English Criminal Courts**

21. On February 4, 2011, the Crown Prosecution Service announced that it had charged, among others, Mr Asif with (1) conspiracy to accept corrupt payments contrary to Section 1 of the *Prevention of Corruption Act 1906*, and (2) conspiracy to cheat at gambling, an offence under Section 42 of the *Gambling Act 2005*.
22. Mr Asif disputed the charges and the matter was heard by Mr Justice Cooke and a jury between October 4, 2011 and October 26, 2011. Mr Asif was found guilty of both charges and sentenced to prison for one year on each count (to run concurrently). Mr Asif served approximately six months of prison time before being released on licence.
23. Mr Asif applied for leave to appeal against his criminal conviction. This application was denied in writing by the English Court of Appeal. Mr Asif has since applied to be heard on the matter by the English Court of Appeal, ideally by a panel of three judges, and the Panel understands that that application is still pending.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

24. The following describes the correspondence between the CAS and Mr Asif during these proceedings. For ease of understanding and for completeness, the factual description also includes correspondence which concerns appeals filed by Messrs Amir and Butt in relation to the Determination.
- On February 25, 2011, the CAS received Statements of Appeal against the Determination from Mr Asif, Mr Butt, and Mr Amir. Mr Asif nominated Romano Subiotto QC for appointment to the Panel. Mr Butt proposed three arbitrators for

appointment to the Panel: Mr Selvadurai Pathmanaban, Mr Om Lalla, and Mr Muchadeyi Masunda. Mr Amir agreed with the proposals made by Mr Butt.

- On March 1, 2011, the CAS acknowledged receipt of the appeals and sought to procure the views of Messrs Amir, Butt, and Asif on consolidation.
- On March 4, 2011, the ICC informed the CAS of its view that consolidation was necessary in order to avoid unnecessary cost and duplication. It also nominated Judge Robert Reid QC for appointment to the Panel.
- On March 3, 2011, Mr Amir informed the CAS that he had no objection to consolidation.
- On March 7, 2011, Mr Asif requested the CAS to stay proceedings while the criminal proceedings against him were concluded, in part because evidence gleaned during the criminal prosecution might be relevant for his CAS appeal.
- On March 16, 2011, the ICC informed the CAS that it did not object to Mr Asif's application for a stay but argued that Mr Asif's appeal should be consolidated with those of Messrs Amir and Butt and on that basis, submitted that if Mr Asif's request for a stay was granted, all three appeals should be stayed.
- On March 21, 2011, Mr Butt informed the CAS that he objected to Mr Asif's application for a stay insofar as it meant that his appeal would be delayed as a result of consolidation.
- On March 29, 2011, Mr Amir informed the CAS of his view that there were no valid grounds for a stay.
- On March 30, 2011, the CAS Court Office proposed to Messrs Butt, Asif, and Amir that Mr Asif's appeal would be stayed while the appeals by Messrs Butt and Amir would be consolidated and proceed according to the standard CAS procedure.
- On April 4, 2011, Messrs Butt and Amir informed the CAS that they agreed with the CAS Court Office's proposal.
- Also on April 4, 2011, the ICC informed the CAS of its view that the CAS Court Office's proposal did not address its submission that wasted costs would be incurred if proceedings were not consolidated. It argued that if the appeals by Messrs Butt and Amir were allowed to proceed, then their right of appeal to the CAS should be exhausted (i.e., if additional evidence became available from the criminal proceedings, that would not give rise to a new right of appeal to the CAS).
- On April 6, 2011, Mr Asif informed the CAS that he objected to the CAS Court Office's proposal on the basis that it was inefficient for appeals by Messrs Butt and Amir to proceed now and then potentially be repeated after conclusion of the criminal

proceedings. Mr Asif also informed the CAS that following discussion with counsel for Messrs Butt and Amir, all three agreed to nominate Romano Subiotto QC to the Panel.

- On April 21, 2011, Mr Butt informed the CAS that, in his view, his appeal should be allowed to proceed now and if additional evidence came to light during the criminal proceedings, a further appeal against the CAS decision should be permitted. If, however, such additional avenue of appeal were not available, Mr Butt agreed to stay the proceedings pending resolution of the criminal case. On April 22, 2011, Mr Amir informed the CAS that, in essence, he agreed with the submissions of Mr Butt.
- On May 6, 2011, the CAS informed Messrs Butt, Asif, and Amir that an appeal of the CAS decision would lie only to the Swiss Federal Tribunal.
- On May 16, 2011, Mr Butt informed the CAS that he was content for the CAS appeal to be stayed until the conclusion of his criminal trial.
- On May 17, 2011, Mr Amir informed the CAS that he was content for the CAS appeal to be stayed until the conclusion of the criminal proceedings.
- On May 23, 2011, the CAS informed Messrs Butt, Amir, and Asif that the appeals would be stayed pending the outcome of the criminal proceedings in the United Kingdom pursuant to Article R32 of the Code of Sports-related Arbitration (the “CAS Code”).
- On January 5, 2012, Mr Asif communicated to the CAS that he had appointed new counsel. He also informed the CAS that he wished to proceed with his appeal and submitted additional grounds of appeal.
- On January 10, 2012, Mr Asif informed the CAS that he wished his appeal to be kept separate from the appeals by Messrs Butt and Amir and that the proceedings should be suspended pending his appeal against criminal conviction and sentence.
- On January 15, 2012, Mr Butt informed the CAS that he was happy for his appeal to proceed and that contrary to his filed Statement of Appeal, he would be appealing only against sanction (i.e., he withdrew his claim against liability).
- On January 19, 2012, Mr Amir withdrew his appeal against liability.
- On January 19, 2012, Mr Butt informed the CAS that he was content for his appeal to be adjourned pending Mr Asif’s appeal against his criminal conviction and sanction.
- On January 24, 2012, the ICC informed the CAS that it had no objection to these appeals proceeding or being stayed pending resolution of Mr Asif’s appeal against his criminal conviction and sentence. However, it objected strongly to the proposal by Mr Asif that the proceedings not be consolidated.

- On January 27, 2012, Mr Asif reiterated to the CAS that he did not want his appeal against the Determination to be heard alongside the appeals by Messrs Amir and Butt.
- On February 14, 2012, Mr Amir withdrew his appeal against sanction.
- On February 15, 2012, the CAS informed the other parties of Mr Amir's withdrawal and requested that the ICC comment on Mr Asif's request to have his appeal heard separately from Mr Butt's.
- On February 20, 2012, the ICC confirmed to the CAS that it objected to the appeals being heard separately.
- On July 24, 2012, Mr Asif asked the CAS to recommence his appeal proceedings.
- On July 27, 2012, the CAS invited the ICC to respond to Mr Asif's request.
- On August 3, 2012, the ICC reaffirmed to the CAS its view that the appeals by Messrs Butt and Asif should be consolidated.
- On August 8, 2012, Mr Asif's counsel responded to the ICC's letter and stated *"if it be the case that Mr Butt's CAS appeal is limited only to sanction, then I would not object to the respective appeals being heard together"*.
- On August 22, 2012, the CAS informed Messrs Butt and Asif of its understanding that the parties agreed that the appeals could be heard together and that the panel would comprise Romano Subiotto QC (nominated by the Players), Judge Robert Reid QC (nominated by the ICC), and a President to be appointed by the Division President of the CAS. The CAS also requested that Counsel confer with a view to agreeing the procedural timetable.
- On November 6, 2012, Mr Butt submitted his appeal brief to the CAS. Included with his appeal brief, Mr Butt filed an amended statement of appeal (dated November 6, 2012), in which he amended his request for relief reflecting the fact that he was no longer pursuing an appeal against liability – his relief was limited to an appeal against sanction.
- On November 8, 2012, Mr Asif submitted his appeal brief to the CAS.
- On December 14, 2012, the CAS circulated to Messrs Butt and Asif and the ICC Mr Graeme Mew's acceptance and statement of independence, in which he disclosed that his firm's Dubai office had in the past provided local advice to the ICC in connection with a non sport-related matter. The parties were reminded of Article R34 of the CAS Code. None of the parties objected to Mr Mew's appointment in this matter.
- On January 4, 2013, the ICC submitted its answer to Mr Butt's appeal brief with exhibits.



- On January 4, 2013, Mr Asif submitted to CAS his revised appeal brief and bundle of exhibits.
- On January 9, 2013, the CAS informed Messrs Butt and Asif and the ICC of the constitution of the Panel as follows: Mr Graeme Mew (President); Mr Romano F. Subiotto QC and Judge James Robert Reid QC (Arbitrators).
- On January 17, 2013, the ICC submitted to the CAS its answer to Mr Asif's appeal brief.
- On January 25, 2013, the parties' counsel had a conference call with the President of the Panel, during which Mr Butt's counsel sought to introduce additional evidence. He submitted a skeleton argument in support of his submission on the same day.
- On January 31, 2013, the ICC submitted a response to Mr Butt's application for permission to introduce late evidence. The ICC opposed the application.
- On January 31, 2013, the ICC submitted a signed version of the Order of Procedure in the Butt and Asif appeals.
- On February 1, 2013, the CAS advised Mr Butt that the Panel had rejected Mr Butt's application to introduce late evidence.
- On February 4, 2013, Mr Asif signed the Order of Procedure.
- On February 4, 2013, Mr Butt signed the Order of Procedure.
- The hearings took place on February 7 (for Mr Asif) and February 8 (for Mr Butt). At the close of the hearing, the parties confirmed that they were satisfied as to how the hearing and the proceedings were conducted.
- In addition to the Panel, Ms Louise Reilly, Counsel to the CAS, and Mr Ruchit Patel, the following people attended the hearing: Mr Asif; Mr Rabi Sukul, Counsel; Mrs Savita Sukul, Solicitor; Mr Ramesh Pershad, Legal Assistant; Mr Raja Pervez Sazad, friend of Mr Asif; Mr Iain Higgins, Head of Legal, ICC; and Messrs Jonathan Taylor and Jamie Herbert, Bird & Bird LLP. No witnesses or experts were called.

#### **IV. SUBMISSIONS OF THE PARTIES**

25. Mr Asif's grounds of appeal may be summarized as follows:

- The ICC violated Mr Asif's rights under Article 6 of the European Convention on Human Rights and the evidence relied upon by the ICC was obtained in contempt of court, which renders the findings of the Tribunal unlawful ("Grounds 1 and 2" respectively);

- The Tribunal misdirected itself as to the standard of proof (“Ground 3”);
- The (circumstantial) evidence shows that Mr Asif did not deliberately overstep the popping crease (“Ground 4”);
- The investigation conducted was not independent (“Ground 5”);
- The Tribunal wrongly relied on the evidence of Mr David Kendix (“Ground 6”);
- The Tribunal lacked the requisite knowledge of cricket (“Ground 7”);
- The Tribunal failed to rely on the best possible evidence, in breach of the best evidence principle (“Ground 8”);
- The Tribunal was improperly influenced by commentary (“Ground 9”);
- The Tribunal improperly relied on evidence from Mr Tom Crone (“Ground 10”);
- The Tribunal erred in its assessment of the telephone records (“Ground 11”);
- The Tribunal proceedings breached principles of natural justice (“Ground 12”);
- The ICC failed to disclose the “*Kitty Kat*” file to Mr Asif (“Ground 13”);
- The ICC incorrectly considered and relied on untested Police Evidence (“Ground 14”); and
- The Tribunal was convened prematurely (“Ground 15”).

26. Mr Asif requests that his sanction should be removed. He does not expressly request any mitigation in relation to his sanction in the alternative, although he advances arguments which could reasonably be interpreted as going to mitigation. Specifically, in his appeal brief dated 4 January 2013, Mr Asif sets out his prayer for relief as follows:

*“By reason of the above matters it is most respectfully submitted that the Tribunal process in question is fatally flawed and should be set aside, and the appellant’s convictions and his sanction be removed.*

- (a) *In the alternative, it is most respectfully prayed, that in the event this Honourable Court deem the appellant’s conviction be valid, it is requested that his sanction be removed by reason of the facts that:*
- (b) *He has no means other than playing cricket to make a living and a continuation of the sanction shall end his career and his livelihood. His family would suffer considerable hardship.*
- (c) *He has served a 12 months prison term in the UK and a ban from all forms of cricket of some three years by the time this appeal is heard.*

- (d) *The ban in question prohibits the appellant from not only playing cricket at all material levels, it prohibits him from coaching cricket and thereby has extinguished the minimal means of working and earning a bare living.*
- (e) *There is no evidence that the appellant benefited financially from the events in question. In point of fact he has suffered heavy financial losses.*
- (f) *The continuation of the ban has removed the appellant's right to work and earn a living. He is, and has been for some time, supported by his father who is a small scale domestic farmer and keeper of a small herd of cattle in Pakistan".*

27. The ICC contests all of Mr Asif's due process and substantive grounds of appeal. As regards due process, the ICC submits that there was no prosecutorial misconduct, no bias or incompetence, no breach as a result of the fact that the Tribunal did not stay proceedings pending the criminal trial, and no failure to apply the proper standard of proof. As regards substance, the ICC submits that the Tribunal weighed the evidence correctly and that the sanction should not be disturbed.

28. The ICC requests the Panel:

*"To dismiss Mr Asif's appeal in its entirety;*

*To order Mr Asif to pay all of the CAS costs in accordance with CAS Code R.64.5; and*

*To order Mr Asif to contribute to the costs that the ICC has been forced to incur in defending this meritless appeal, again in accordance with CAS Code R.64.5".*

## V. ADMISSIBILITY

29. Article R49 of the CAS Code provides as follows:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".*

30. Section 7.3 of the ICC Code states that:

*"The deadline for filing an appeal to CAS shall be twenty one (21) days from the date of receipt of the written reasoned decision by the appealing party. ..."*

31. In this case, Mr Asif's appeal was filed on February 25, 2011 (*i.e.*, within 21 days of receipt of the decision appealed against). The Panel is therefore satisfied that Mr Asif's appeal is admissible.

## **VI. JURISDICTION**

32. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

33. The pertinent excerpts from Section 7 of the ICC Code are set out below:

*“Article 7 - Appeals*

*The following decisions made under the Anti-Corruption Code may be challenged by the ICC or the Player or Player Support Personnel who is the subject of the decision (as applicable) solely by appeal to the CAS as set out in this Article 7*

*7.1.3 a decision that an offence under the Anti-Corruption Code has (or has not) been committed”.*

34. The jurisdiction of the CAS is not disputed and was confirmed by the parties’ signing of the Order of Procedure.

## **VII. APPLICABLE LAW**

35. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

36. Section 7.3.3 of the ICC Code states that in all appeals to CAS pursuant to Article 7, *“the governing law shall be English law and the appeal shall be conducted in English, unless the parties otherwise agree”.*
37. The parties have not objected to the application of English law in the CAS proceedings. The Panel will therefore apply the ICC Code, and to the extent necessary, English law.

## **VIII. MERITS**

38. Mr Asif’s appeal grounds are dealt with in order of convenience below.

**A. Mr Asif's Due Process Grounds (Grounds 1, 2, 3, 5, 7, 12, 13, 14, and 15)**

39. The Panel addresses first the grounds advanced by Mr Asif which assert lack of due process, namely:
  - Ground 1, that the ICC violated Mr Asif's rights under Article 6 of the European Convention on Human Rights, *i.e.*, Mr Asif's contention that publication of the decision on February 5, 2011 and the publication of the reasons on February 9, 2011 rendered the *ex ante* conduct/decision of the ICC unlawful, null, and void.
  - Ground 2, that the evidence relied upon by the ICC was obtained in contempt of court and prejudiced Mr Asif's criminal trial, thus rendering the *ex ante* findings of the Tribunal unlawful.
  - Ground 3, that by failing to explain the definition of "*beyond reasonable doubt*", the Tribunal misdirected itself as to the standard of proof and the Tribunal member could therefore have applied different standards of proof.
  - Ground 5, that the ICC failed to conduct an independent investigation primarily because it did not conduct separate interviews (but, rather, relied on the police interviews).
  - Ground 7, that the Tribunal was not competent because it lacked the requisite knowledge of cricket.
  - Ground 12, that the Tribunal proceedings breached principles of natural justice because its composition was dictated by the ICC (and because the Chairman was the Chairman of the Anti-Corruption Committee).
  - Ground 13, that the ICC failed to disclose the "*Kitty Kat*" file to Mr Asif.
  - Ground 14, that the ICC incorrectly considered and relied on untested and, by the standards of English criminal law, potentially inadmissible Police Evidence.
  - Ground 15, that the Tribunal was convened prematurely.
40. Article R57 of the CAS Code confers upon CAS Panels full power to review the facts and the law. It has the power to issue a new decision which replaces the decision challenged or to annul the decision and refer the case back to the previous instance. As held in a previous CAS case "*the Panel determines that the CAS appellate arbitration procedure under Article R57 of the CAS Code entails a trial de novo which can cure such procedural defects at first instance. Before the CAS Panel, the Appellant was given the opportunity to bring forward witnesses, and make oral representations regarding his case in this hearing and therefore, any alleged departure by the ITU in this respect is made well*" (See CAS 2011/A/2357, at paras. 8.11 and 8.12.).
41. Furthermore, in the recent case of *A. Menarini Diagnostics SRL v. Italy* (Case 43509/08), the European Court on Human Rights confirmed that where a party has access to a court with

full judicial review jurisdiction (including on the merits), the administrative decision of a competition authority is not in breach of Article 6 of the European Convention on Human Rights:

*“The applicant company had been able to challenge the penalty before the administrative court and to appeal against that court’s decision to the Consiglio di Stato. According to the Court’s case-law, these bodies met the standards of independence and impartiality required of a court. The administrative courts had examined the applicant company’s various allegations, in fact and in law. They had thus examined the evidence produced by the AGCM. The Consiglio di Stato had also pointed out that where the administrative authorities had discretionary powers, even if the administrative court did not have the power to substitute itself for an independent administrative authority, it was able to verify whether the administration had made proper use of its powers. As a result, the role of the administrative courts had not been limited simply to verifying lawfulness. They had been able to verify whether, in the particular circumstances of the case, the AGCM had made proper use of its powers. They had been able to examine whether its decisions had been substantiated and proportionate, and even to check its technical findings. Moreover, the review had been carried out by courts having full jurisdiction, in so far as the administrative court and the Consiglio di Stato were able to verify that the penalty was fit the offence, and they could have changed it if necessary. In particular the Consiglio di Stato, had gone beyond a “formal” review of the logical coherency of the AGCM’s reasoning and made a detailed analysis of the appropriateness of the penalty, having regard to the relevant parameters, including its proportionality. The decision of the AGCM had thus been reviewed by judicial bodies having full jurisdiction”<sup>1</sup>.*

42. Accordingly, even if the Panel was persuaded that the due process failures alleged by Mr Asif had merit, given that the CAS has full judicial review jurisdiction on both the facts and the law, any such defects would be cured through the recourse that Mr Asif has had to the Panel. Mr Asif also acknowledged during the Hearing that he now believes that he has had a full and fair hearing.
43. The Panel notes the ICC’s argument that there may be a potential tension between Article 7.3.2 of the ICC Code (which permits a CAS Panel to conduct a *de novo* hearing only where required to do so “*in order to do justice*”, for example to cure procedural errors at the first instance hearing, and limits the scope of review in all other cases to the consideration of whether the decision being appealed was erroneous) and R57 of the CAS Code. However, the Panel considers that no such tension in fact exists because Article 7.3.2 of the ICC Code enables the CAS to conduct a *de novo* review where, as here, the applicant requests such review (for example because s/he feels that the interests of justice have not been served as a result of due process violations).
44. As an aside, the Panel is not satisfied based on the evidence placed before it that there was any significant lack of due process in this case, but even if there was, the failings Mr Asif

<sup>1</sup> Information Note on the Court’s case-law No. 144, August-September 2011, *A. Menarini Diagnostics S.r.l. v. Italy* - 43509/08, Judgment 27.9.2011 [Section II], which can be found at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=002-385>.

asserts do not, in the Panel's view, assist him or negate the findings contained in the Determination. More specifically:

- Even if Grounds 1 and 2<sup>2</sup> of Mr Asif's complaint were made out, it would mean that the ICC and/or the Tribunal would be in contempt of court and/or that there would be prejudice to the criminal proceedings. These factors would not necessarily have any impact on the substance of the findings, which were considered and decided upon before publication of the Determination (publication *ex post* cannot impugn analysis conducted *ex ante* and any prejudice to the subsequent criminal proceedings does not impugn the analysis contained in the Determination). In addition, the Panel notes that Mr Asif was himself eager for the Tribunal proceedings to advance and that when afforded the opportunity, he did not object to the Tribunal proceedings advancing ahead of the criminal proceedings. He cannot therefore now claim that such advancement was to his detriment.
- In relation to Ground 3<sup>3</sup>, the Panel has little doubt, if any, that a Tribunal consisting of three eminent jurists would have misdirected itself as to the nature of "*beyond reasonable doubt*". The Tribunal proceedings did not involve a jury who would have benefited from open instructions on the point. In any event, the Tribunal made clear at paragraph 27 of the Determination its unanimous understanding of what constitutes "*beyond reasonable doubt*".

*"As to what constitutes 'beyond reasonable doubt' we found useful guidance in the dictum of Denning J in Miller v Minister of Pensions 1947 2 All ER 372 at 373 H referring to the degree of cogency: '... as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice'."*

- In relation to Grounds 5 and 14<sup>4</sup>, the Panel is not convinced that the ICC or Tribunal procured a significant volume of material from the police. According to the ICC, the

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<sup>2</sup> Ground 1 is that the ICC violated Mr Asif's rights under Article 6 of the European Convention on Human Rights, i.e., Mr Asif's contention that publication of the decision on February 5, 2011 and the publication of the reasons on February 9, 2011 rendered the *ex ante* conduct/decision of the ICC unlawful, null, and void. Ground 2 is that the evidence relied upon by the ICC was obtained in contempt of court and prejudiced Mr Asif's criminal trial, thus rendering the *ex ante* findings of the Tribunal unlawful.

<sup>3</sup> Ground 3 is that by failing to explain the definition of "*beyond reasonable doubt*" in open court, the Tribunal misdirected itself as to the standard of proof and the Tribunal members could therefore have applied different standards of proof.

<sup>4</sup> Ground 5 is that the ICC failed to conduct an independent investigation primarily because it did not conduct separate interviews (it relied on the police interviews). Ground 14 is that the ICC incorrectly considered and relied on untested Police Evidence.

only information that the ICC obtained from the police was confirmation that certain phone calls were made to Mr Butt at certain times on certain dates and the Panel understands that this information was made available to the ICC following an *ex parte* application to the High Court. The Panel does not consider that it was wrong for the ICC and the Tribunal to consider and rely on contemporaneous interview transcripts (Mr Asif's police interview was held on September 3, 2010, just over one week after the no-balls were bowled) and, given that there is no property in evidence (see *Harmony Shipping Co SA v. Davis* [1979] 1 WLR 2195, CA at 20), the Panel does not find any objection to the ICC and Tribunal relying on evidence that originated from the police. This is particularly so given that (1) Mr Asif himself provided the police interview transcripts to the ICC, (2) Mr Asif himself requested (additional) police evidence in order to prepare for the Tribunal hearing and did not object to the ICC's *ex parte* application, and (3) in any event, Article 3.2 of the ICC Code releases the Tribunal from the confines of judicial rules governing the admissibility of evidence and allows it to establish facts relating to an offence under the ICC Code "*by any reliable means*".

- In relation to Ground 7<sup>5</sup>, the Panel considers that Justice Sachs and the other members of the Tribunal are extremely eminent jurists and it accepts, based on paragraph 9 of the witness statement of Iain Higgins, that they "*have a good and sufficient knowledge of the game of cricket*". Any argument that they lacked competence should be made with care, and given that Mr Asif did not provide any compelling evidence to that effect, the Panel considers the allegation regrettable.
- In relation to Ground 12<sup>6</sup>, the Panel notes that Mr Asif has never objected to Article 5 of the ICC Code (which concerns the format, scope, arrangements, and substance of disciplinary procedures by the ICC). The Panel considers that an *ex post* allegation of the appearance of bias is not compelling in circumstances where (1) a player has voluntarily agreed for disputes to be heard by an anti-corruption tribunal of the ICC, and (2) that player has also had the opportunity to object to the composition of the panel and has not done so. As the House of Lords observed in *Locabail (UK) Ltd. v. Bayfield Properties Limited* [2000] QB 451, 481, paragraph 26:

*"If, appropriate disclosure having been made by the judge, a party raises no objection to the judge hearing or continuing to hear a case, that party cannot thereafter complain of the matter disclosed as giving rise to a real danger of bias. It would be unjust to the other party and undermine both the reality and the appearance of justice to allow him to do so. What disclosure is appropriate depends in large measure on the stage that the matter has reached. If, before a hearing has begun, the judge is alerted to some matter which might, depending on the full facts, throw doubt on his fitness to sit, the judge should in our view enquire into the full facts, so far as they are ascertainable, in order to make disclosure in the light of them. But if a judge has embarked on a hearing in ignorance of a matter which emerges during the hearing, it is in our view enough if the judge discloses what he then knows.*

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<sup>5</sup> Ground 7 is that the Tribunal was not competent because it lacked the requisite knowledge of cricket.

<sup>6</sup> Ground 12 is that the Tribunal proceedings breached principles of natural justice because its composition was dictated by the ICC (and because the Chairman was the Chairman of the Anti-Corruption Committee).



*He has no obligation to disclose what he does not know. Nor is he bound to fill any gaps in his knowledge which, if filled, might provide stronger grounds for objection to his hearing or continuing to hear the case. If, of course, he does make further enquiry and learn additional facts not known to him before, then he must make disclosure of those facts also. It is, however, generally undesirable that hearings should be aborted unless the reality or the appearance of justice requires that they should”.*

- In relation to Ground 13<sup>7</sup>, the Panel understands that a redacted copy of the “Kitty Kat” evidence was disclosed to Mr Asif’s counsel prior to the Tribunal hearing in January 2011 as part of the second witness statement of Alan Peacock. In any event, it appears to us that the “Kitty Kat” evidence neither implicates nor exculpates Mr Asif. It is, at best, neutral.
- Finally, in relation to Ground 15, the Panel considers that Mr Asif’s contention that the Tribunal was hastily convened improper and unsustainable given that it was his request that the proceedings be heard as soon as possible.

45. For the reasons set out above, the Panel dismisses all of Mr Asif’s due process grounds of appeal.

#### **B. Mr Asif’s Substantive Grounds (Grounds 4, 8, and 11)**

46. Mr Asif submits that he played no part in the spot fixing that occurred during the Lord’s Test. He considers that Messrs Butt and Amir (the other two Players who were the subject of the Tribunal proceedings) were part of a conspiracy but that he was not. In support of his position on liability, Mr Asif submits *inter alia* that:

- He was coerced to “run faster” by his Captain (Salman Butt) and this coercion disturbed his rhythm and led to the “no ball” (Ground 8);
- Mr Asif’s “no ball” was a marginal infraction which would have been difficult to bowl deliberately, was well within the scope of error for fast bowlers attempting to bowl a quicker ball, and was not consistent with Mr Majeed’s promise that the “no ball” would be “well over” (Grounds 4 and 8);
- The volume of phone and text traffic between Messrs Asif and Majeed was significantly less than the phone and text traffic and interactions between Mr Majeed and other players and Mr Asif did not call Mr Majeed on his “safe line”;
- None of the money given by Mr Khan to Mr Majeed was found in Mr Asif’s room; and
- Unlike for one of Mr Amir’s “no ball(s)”, Mr Butt was not looking at the bowler when Mr Asif bowled the “no ball”.

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<sup>7</sup> Ground 13 is that the ICC failed to disclose the “Kitty Kat” file to Mr Asif.

47. Mr Asif also submits other reasons in support of this plea, which are not dealt with in this Award because they are patently inconsistent with the evidentiary record before the Panel (e.g., Mr Asif's claim that Mr Majeed "*never mentioned [Mr Asif's] name ... he always said that Amir will bowl the balls*" is inconsistent with the videotape evidence available to the Panel, which shows Mr Majeed clearly indicating that Mr Asif would bowl a "no ball" on the sixth ball of the tenth over). The substantive submissions are dealt with in turn below.

*i. The "run faster" defence*

48. Mr Asif submits that his "no ball" on the sixth ball of the tenth over was bowled because immediately beforehand his Captain (Salman Butt) disrupted his rhythm by requesting that he "*run faster, do it*". Mr Asif submits that he was particularly susceptible to disruption given the importance of the match (against England) and the venue (Lord's).
49. Mr Asif does not submit that the cricket pitch conditions contributed to the "no ball" being bowled, notwithstanding that (1) this was his initial explanation during his police interview on September 3, 2010, and (2) immediately after bowling the "no ball", Mr Asif checked his studs for wet dirt and appeared to blame the conditions (which contributed to another player, Mr Saeed Ajmal, placing sawdust where his back foot had landed).
50. For Mr Asif's version of events to be compelling to the Panel, it would need to be the case that (1) Mr Butt did instruct Mr Asif to "*run faster, do it*" in the hope that by disrupting Mr Asif's rhythm, he would inadvertently overstep, and (2) the instruction would need to have had its intended effect (i.e., Mr Asif would have had to in fact run faster and/or disrupted his rhythm in some fashion).
51. The Tribunal discounted the possibility that Mr Butt instructed Mr Asif to "*run faster*" *inter alia* because Mr Butt denied that he said anything significant to Mr Asif before the "no ball" and because the instruction to "*run faster, do it*" made little sense in the context of the game – running faster would have disrupted his discipline rather than enhancing the chance of a wicket. Given that Mr Butt has now accepted his involvement in the fix (which was not the case during the Tribunal), the Panel does not consider that his actions should be judged by reference to what a fielding Captain would have ordinarily wanted (i.e., a wicket). In this Panel's view, it is at least theoretically possible that Mr Butt, aware of and involved in the fix, tried to disrupt Mr Asif's rhythm in order to improve the chance of a "no ball" and that Mr Asif was so disrupted. However, we see little evidence of this factual matrix:
- First, the video footage available does not conclusively show what Mr Butt said to Mr Asif.
  - Second, Mr Asif showed no visible signs of agitation either before or after he bowled the "no ball" (e.g., if the "no ball" was bowled as a result of provocation by Mr Butt, one might have expected some interaction with Mr Butt after the "no ball," even if it was just a glare). In the event, Mr Asif calmly checked his studs for wet dirt, inspected the conditions, and instructed Mr Ajmal to place sawdust where his back foot landed.

- Third, there is no discernible difference between Mr Asif's run up for the 5<sup>th</sup> and 6<sup>th</sup> ball of the 10<sup>th</sup> over in the Lords Test Match (the time taken for each run-up is almost identical and Mr Asif's assertion that his strides were longer than normal is difficult to reconcile with the video evidence).

52. In addition, the Panel is not satisfied that an experienced and highly ranked international bowler who had played 22 Test Matches before the Lord's Test including another Test Match at Lord's (against Australia) would be disrupted to any significant extent by a comment so innocuous from a player of broadly similar seniority. Had Mr Butt truly desired to disrupt Mr Asif's rhythm, the Panel would have expected more significant provocation or something more directly related to the game that would have stood a better chance of securing the "no ball" (e.g., a suggestion that Mr Asif shortens or lengthens his run-up or bowls an effort ball – as to which see below).
53. The Panel does not therefore consider that Mr Asif's explanation for the "no ball" withstands critical scrutiny.

*ii. A marginal infraction?*

54. Mr Asif submits that his "no ball" was a marginal infraction which would have been difficult to bowl deliberately, that it was well within the scope of error for fast bowlers attempting to bowl a quicker ball, and that it was not consistent with Mr Majeed's promise that the "no ball" would be "*well over*".
55. In this respect, Mr Asif contends that the statistical evidence submitted by Mr Kendix as to the likelihood of a "no ball" by Mr Asif is false, misleading, and unreliable. Initially, Mr Asif claimed that this was because Mr Kendix applied simple mathematics to bare historical data and ignored the atmospheric conditions at Lords on August 26, 2010. During the Hearing, however, Mr Asif's counsel altered his submission and contended that Mr Kendix's erred by determining that Mr Asif was likely to bowl a "no ball" once in every 90 deliveries (i.e., had a "no ball" frequency of 1.12%). Mr Asif's counsel claimed that the likelihood of a "no ball" should have been measured by reference to Mr Asif's first spell only, as that was the spell in which Mr Majeed had said there would be a "no ball". According to Mr Asif, the relevant denominator was 30, i.e., the likelihood of a "no ball" was 1 in 30.
56. The Panel accepts that Mr Asif's "no ball" was minor (around 2 inches over) relative to the "no balls" bowled by Mr Amir (who was approximately 9 inches over in his first "no ball" and approximately 12 inches over in his second). However, the questions of (1) whether it was deliberate or within the scope of error for fast bowlers attempting to bowl a quicker ball, and (2) whether it was "*well over*", are subjective matters to be determined by reference to the particular skills and capabilities of Mr Asif.
57. The Panel has seen data from two eminent statisticians on the likelihood of a "no ball" by Mr Asif. As expected, the data show that the bowlers that are more prone to overstepping are the "out-and-out" fast bowlers (e.g., Brett Lee and Morne Morkel). According to Mr Kendix, in 23 Test Matches, Mr Asif, a fast-medium bowler, bowled only 58 "no balls" in 5,171 deliveries

(a rate of 1.12% or 1 in 90) and 24 of those “no balls” was in one match (which could indicate that the true ratio is less than 0.7%). According to Mr Duckworth, the likelihood of Mr Asif (alone) bowling a “no ball” is 1 in 80. On the basis of this data, the Panel is satisfied that Mr Asif was not prone to overstepping (in the way that certain faster bowlers are). The Panel did not find persuasive Mr Asif’s argument that the relevant denominator should be 30, as this would require Mr Asif to bowl a “no ball” in his first spell which is by no means guaranteed by reference to the statistics mentioned above.

58. The Panel is also satisfied that Mr Asif was not necessarily more prone to overstepping when seeking to bowl an “effort ball” (such as a quicker ball, bouncer, or a Yorker). According to Mr Kendix, 28 of the deliveries Mr Asif bowled during the Lord’s Test were quicker than the “no ball” (which was bowled at 80.7mph), but none of these was declared a “no ball”. Mr Kendix adds that because the “no ball” in question was slower than 30% of the other 91 deliveries bowled by Mr Asif, the “no ball” was not an effort ball but was well within the range of his normal variation.
59. The Panel considers that Mr Asif’s run up can be described as steady, rhythmical, and controlled. With such control, Mr Asif would under normal conditions be capable of judging with some precision where his front foot would land. Given (1) according to Mr Asif, his control was not impaired by adverse weather conditions during the Lord’s Test, and (2) that Mr Asif was not prone to overstepping, even when bowling “effort balls,” the Panel is not persuaded by Mr Asif’s arguments.

### *iii. Telephone and text traffic*

60. Mr Asif contends that the volume of telephone and text message traffic between Messrs Majeed and Asif was lower than between Messrs Majeed and Butt, and Messrs Majeed and Amir. He also submits that Mr Asif did not call Mr Majeed on his “safe line” (*i.e.*, the line Mr Majeed often used to communicate with Messrs Butt and Amir). Mr Asif also argues that it was wrong of the Tribunal to ascribe “*conspiratorial intent*” to phone calls from Mr Majeed late at night in the middle of a Test match<sup>8</sup> and cites an example of late night contact between Messrs Majeed and Asif on August 18/19, 2010 where the subject matter was benign.
61. The Panel accepts in part based on the evidence of Mr Martin Vertigen that, in the period August 16-28, 2010, the number of calls and texts between Messrs Asif and Majeed (31) was lower than the number of calls and texts between Messrs Majeed and Butt (148) and between Messrs Majeed and Amir (112). The Panel also accepts, based on Mr Vertigen’s evidence, that there was no contact between Messrs Asif and Majeed on the “safe line” during the same period, whereas Messrs Majeed and Butt used the “safe line” 17 times and Messrs Amir and Majeed used the “safe line” 10 times.

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<sup>8</sup> Paragraph 164 of the Determination.

62. That said, it is not in dispute that there was direct or indirect contact between Mr Asif and others (potentially) involved in the fix at critical points in time:
- First, the phone records show that just a few hours prior to Mr Majeed's meeting with Mr Khan at the Copthorne Tara Hotel, Mr Majeed's brother (Mr Azhar Majeed) spoke to Mr Asif for 42 seconds at 19:09.
  - Second, the phone records show that Mr Butt (who has accepted his involvement in the fix) sought to call Mr Asif three times on the evening of August 25, 2010 (at 19:57, 20:01, and 20:01), just a few hours before Mr Majeed met with Mr Khan. It may be the case that Mr Butt was unsuccessful in reaching Mr Asif on one of these calls (the first call at 20:01).
  - Third, the phone records show that immediately after his meeting with Mr Khan at the Copthorne Tara Hotel, Mr Majeed called Mr Asif at 23:16 and spoke to him for 30 seconds. The Panel was shown video evidence of a phone call that Mr Majeed had with Mr Amir on the same day at 23:10 (during the meeting with Mr Khan), which lasted only 20 seconds and was sufficient to confirm arrangements that had been previously discussed.
  - The phone records show that on the evening of August 26, 2010 (*i.e.*, the evening of the day on which Mr Asif had bowled the "no ball"), Messrs Majeed and Asif spoke to each other or sought to speak with each other a total of 12 times. Some of these calls were relatively lengthy.
63. The Panel understands from the Determination<sup>9</sup> that Mr Asif was not able to advance cogent explanations for these calls. He suspected that they may have to do with sponsorship opportunities or commercial matters. Given that the Panel does not have more reliable evidence as to the nature of the conversations between Messrs Majeed and Asif, it is difficult to exclude entirely the possibility that they may have concerned commercial or sponsorship matters. However, the Panel does not find the explanation plausible given that (1) the Panel was not presented with any corroborating evidence of the explanations (*e.g.*, evidence of sponsorships secured by Mr Majeed or as to any sponsorship proposal discussed during the relevant period potentially for Mr Asif's benefit), and (2) the length of the call immediately after the meeting at the Copthorne Hotel (30 seconds) seemed insufficient to discuss matters of commercial importance. Accordingly, the Panel is not persuaded that the arguments advanced by Mr Asif breach the inference established by the Tribunal and does not consider it dispositive that Messrs Asif and Majeed did not use a "*safe line*".

***iv. No money was found in Mr Asif's room***

64. Mr Asif submits that it is exculpatory circumstantial evidence that the NoTW's marked bills were not found in Mr Asif's possessions. While it is true that there is no evidence that Mr Asif

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<sup>9</sup> Paragraphs 115 and 153, and footnote 37.

received money from Mr Majeed, the Panel notes that an infringement of Article 2.1.1 of the ICC Code does not require a player to gain financially. The question to be answered is whether Mr Asif fixed, contrived in any way, influenced improperly, or was a party to any effort to fix, contrive in any way, or influence improperly, the result, progress, conduct or any other aspect of any International Match or ICC Event. In other words, a player who is involved in a fix breaches Article 2.1.1 notwithstanding that he does not benefit financially from doing so. Accordingly, the Panel does not consider the absence of financial gain to be determinative of the fact that there is no infringement.

**v. *Unlike for one of Mr Amir's "no ball", Mr Butt was not looking at the bowler when Mr Asif bowled the "no ball".***

65. During the Hearing, Mr Asif's counsel submitted that unlike for at least one of Mr Amir's "no balls," Mr Butt was not looking at the bowler when Mr Asif delivered the "no ball" but only turned around to look at Mr Asif and the umpire's call after the ball was bowled once the ball had been played by the batsman (Andrew Strauss) towards point. According to Mr Asif's counsel, if Mr Butt were anxious that the "no ball" be bowled, he would have looked either at the time the ball was bowled or immediately afterwards once it was played.
66. The Panel did not find these submissions compelling. First, Mr Butt was fielding at silly mid-off at the time. Given the perils of that position (there is an extremely short reaction time for balls hit towards that position), we draw no inference from the fact that Mr Butt sensibly remained focused on the batsman while Mr Asif was in stride/delivering the ball. In addition, we draw no inference from the fact that Mr Butt looked around at the umpire's "no ball" call after it was clear that the ball had not been played towards him. The Panel considers that it is instinctive to look at an umpire's "no ball" call once it is made and after it is clear that the player has no fielding responsibility.

**vi. *Other submissions***

67. Mr Asif submits that the Tribunal was inappropriately led by commentary given by Sky Sports during the "no balls" in question. He submitted that the Panel should disregard the comments of one of the commentators, Michael Atherton, but should accept the comments of another, David Lloyd, on the basis that he managed the England team, played Test Cricket, and was an umpire. We are not convinced that the comments of Mr Lloyd are necessarily more probative than those of Mr Atherton (who also played Test Match Cricket for England including many games as Captain). However, we found no credence to Mr Asif's point, given that both commentators described Mr Asif's "no ball" as substantial. For the purpose of this Award, we have placed no reliance on the Sky Sports commentary.
68. Mr Asif also submits that the Tribunal erred by relying on the evidence of Mr Thomas Crone, on the basis that he is implicated in the Leveson Enquiry. We do not find that the Tribunal placed any significant weight on the evidence of Mr Crone and in any event, no findings of impropriety have yet been made against him.

**vii. Conclusion on Substance**

69. The Panel finds that there is no evidence advanced by Mr Asif which clearly exculpates him. His submissions do not break the chain of circumstantial evidence or in any way undermine the reasoning contained in the Determination. For those reasons, the Panel is satisfied beyond reasonable doubt that Mr Asif was also a party to the conspiracy in which Mr Butt and Mr Amir are admitted conspirators. The Panel dismisses all of Mr Asif's substantive grounds of appeal.

**IX. SANCTION**

70. Based on his procedural and substantive grounds of appeal, Mr Asif requests that the Panel adopt an award removing his sanction of seven years ineligibility, two years of which were suspended (some of which is already served). Mr Asif does not request a reduction in the sanction in the alternative but advances pleas, which, he argues, should also militate in favour of a removal of the sanction (notwithstanding that they could equally go to mitigation). These include the fact that Mr Asif (1) has no other means of earning a living, (2) has suffered considerable hardship, and (3) has served a prison sentence for the same set of facts.
71. The Panel does not consider Mr Asif's pleas for mitigation to be compelling. First, in relation to his criminal sentence, Mr Justice Cooke imposed a more lenient prison term than he was otherwise minded to do precisely because the ban imposed by the ICC was "*considerable punishment for a man in [Mr Asif's] position*"<sup>10</sup>. Mr Asif has therefore already had the benefit of a reduction in sentence as a result of being charged with separate offences for the same factual matrix. The Panel does not see any reason why he should have such benefit twice.
72. As regards Mr Asif's pleas of financial hardship and ability to earn a living, the Panel is sympathetic. However, given the history of corruption in cricket and the considerable adverse publicity caused by this episode, the Panel considers that strong enforcement action is necessary to send a signal of deterrence. The Panel also notes that the sanction could be described as lenient when considered in context (*e.g.*, when compared against the sanctions imposed by the ECB on Mr Mervyn Westfield and Danish Kaneria for spot fixing and when compared to the jurisprudence of the CAS for match fixing). Examples include CAS 2009/A/1920, award dated April 15, 2010 (upholding a life ban on a club president who was involved in an attempt to fix a match), CAS 2010/A/2172, award dated April 15, 2010 (upholding a life ban on a referee for failing to report an approach made to him to fix a match), CAS 2011/A/2490, award dated March 23, 2012 (upholding a life ban imposed on a tennis player for offering other players bribes to lose matches), and CAS 2011/A/2621, award dated September 5, 2012 (upholding a life ban on a tennis player for offering a fellow athlete a bribe to lose the first set of a match). Indeed, in CAS 2011/A/2621, the CAS has previously held

<sup>10</sup> Sentencing remarks of Mr Justice Cook in *R v Majeed, Butt, Asif, & Amir*, Southwark Crown Court, November 3, 2011, paragraph 33.

that lifetime bans are the only truly effective means of purging a sport of corruption (paragraph 8.33-8.35).

73. The Panel does not therefore make any modification to the sanction imposed by the Tribunal on Mr Asif.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr Mohammad Asif on February 25, 2011 is dismissed.
2. The decision of the ICC Tribunal issued on February 5, 2011 is confirmed.
3. (...)
4. (...)
5. All other motions or prayers for relief are dismissed.