

**Written Reasons for decisions pursuant to Article 5.2.12.2(c) of the International Cricket Council Code of Conduct for player and player support personnel (the Code)**

**In the matter of a level 3 offence alleged by ICC to have been committed by Mr. James Anderson on the 10<sup>th</sup> July, 2014.**

**In the matter of an appeal by Mr. Jadeja against a decision by the Match Referee dated 25<sup>th</sup> July, 2014.**

Although these two disciplinary matters were heard together, that did not alter the fact that two separate charges against different players were before this disciplinary tribunal, involving offences alleged at two different levels and thus requiring the application of two different standards of proof.

The first in time involves a charge against Mr Anderson (Anderson) that he has committed a level 3 offence under the Code in that he has breached Article 2.3.3 in that he has been guilty of conduct that is either:

- (a) contrary to the spirit of the game, or
- (b) brings the game into disrepute.

The conduct complained of is verbally threatening Mr Jadeja (Jadeja) at the end of the morning session on Thursday 10 July 2014 while the players were still on the field but leaving for lunch and/or by pushing Jadeja in the back while in the corridor to the changing rooms and/or by aggressively telling Jadeja to get back to his dressing room.

The second charge in time involves a charge against Jadeja that he has committed a level 2 offence under the Code in that he has breached Article 2.2.11 by his behaviour in the corridor leading to the changing rooms, at the same time as the incident resulting in the charge laid against Anderson. Essentially, it is alleged that when Anderson left the public area and entered the pavilion, Jadeja turned suddenly and took steps towards Anderson in an aggressive and threatening manner. It is alleged that Jadeja stopped close to Anderson for a few seconds, blocking Anderson's path to the dressing room. It is alleged Anderson responded instinctively to Jadeja's conduct, by putting his hands up in a defensive manner and asking Jadeja to continue to his dressing room.

This second matter came before me in a circuitous way. Initially the English Cricket Board (ECB) alleged that Jadeja had committed a level 2 offence arising out of the same set of circumstances in which Anderson is alleged to have offended, but confined to the corridor.

Page 2.

Because the Code specifically forbids a level 2 and a level 3 charge being heard together, (Article 5.4.3) I understand a separate hearing was convened by the Match Referee who handed down his decision on 25th July, 2014. That decision was unacceptable to Jadeja who lodged an appeal against the Match Referee's decision.

As part of that decision, the Match Referee had reduced the level of the charge against Jadeja to level 1 and pursuant to Article 8.1.1 an appeal against a level 1 offence is not permitted. However, because any appeal from a decision of a Match Referee is heard de novo by a Disciplinary Commissioner, I ruled that any rulings by the Match Referee no longer had any effect and a Commissioner commences the Hearing of the appeal with a clean sheet, that is with the charge against Jadeja in its original form i.e. alleging a level 2 offence and was thus appellable.

That ruling follows the practice generally adopted in Australia where an appeal against any decision involves a hearing de novo. However my ruling highlights the need for this article in the Code to be clarified.

I turn now to consider the particulars of the charge against Anderson.

On 11 July 2014, a report on form Rep 1 was filed by the Indian Cricket Team Manager, Mr Dev, alleging a breach of Article 2.3.3 of the Code by Anderson in accordance of Article 3.1 of the Code.

Article 2.3.3 is something of a catch-all and alleges conduct that either:

- (a) is contrary to the spirit of the game, or
- (b) that brings the game into disrepute.

I have already expressed my view to the parties that in respect of the charges against Anderson and Jadeja, some election should have been made between (a) and (b) to avoid the charges being bad for duplicity. However the response I received was that all parties were prepared to proceed with the alternative wording and in view of that agreement, I have proceeded with this matter.

The totality of the level 3 charge against Anderson can be broken down into three specific happenings.

1. A verbal exchange at the boundary line between Anderson and Jadeja, with Mr. Dhoni (Dhoni) present, on 10<sup>th</sup> July, 2014.
2. A physical incident in the corridor leading to the changing rooms in which Anderson is alleged to have pushed Jadeja in the back.
3. Anderson, using obscene language to tell Jadeja to go to his dressing room.

I will deal with these matters a seriatim.

As with virtually everything else happening as the players left the field for lunch, there are conflicting versions of what happened. Jadeja made a statement and gave oral evidence that after a morning of abuse, where he faced 18 balls, abuse from Anderson continued after the lunch break was called. Although Jadeja says he can speak some English "but is by no means fluent", apparently he could still understand Anderson when he said to him, "what the f\*\*\* are you smiling at? I'll knock your f\*\*\*\*\* teeth out in the dressing room". This was apparently responded to by the Indian captain Dhoni, who told Anderson that if he came to the Indian dressing room he, Dhoni "would squeeze the juice out of him (Anderson)". Unfortunately, although there is video of the three players close to the boundary of the cricket ground, before leaving to enter the corridor leading to the dressing rooms, there is no audio to evidence this exchange. Umpire Oxenford did not witness it but Anderson made a written statement and gave oral evidence in relation to it. In his written statement Anderson agreed that as he left the field for lunch, he and Dhoni and Jadeja exchanged some words. He said there was nothing particularly heated as they left the ground and he also stopped close to the steps to clap Dhoni and Jadeja off the field.

In his oral evidence, Anderson said he really could not remember what was said in the conversation with Dhoni but it was not particularly heated. He said he very much doubted he would have said the words attributed to him and he only remembered speaking to Dhoni in any event. Contrary to his reference to Jadeja in his written statement, he could not remember saying anything to Jadeja. Anderson pointed out that Jadeja was on the other side of Dhoni, who was nearest to him.

Without audio of the incident, I am not comfortably satisfied that the incident as described by Dhoni and Jadeja took place as they describe. Certainly because of the positioning of the players, it seems more likely that any words from Anderson were directed to Dhoni which is not what he is charged with. However even accepting the version of events given by Dhoni and Jadeja and noting Anderson's rather vague denial, in my view this exchange taken at its worst, does not warrant any disciplinary action. First, according to the witness Prior, the words 'f\*\*\*' and 'f\*\*\*\*\*' are common place on an international cricket field. Second, it is not in issue that earlier in the morning Umpire Oxenford took the action he describes in para. 6 of his statement where he said "I heard Anderson use foul and abusive language to Dhoni. In particular I heard Anderson say "you're a f\*\*\*\*\* fat c\*\*\*" to Dhoni". However, apart from ordering Anderson to say nothing further to the batsman (I assume of an abusive nature) Umpire Oxenford did not deem that language sufficiently serious to lodge a report about the incident with the Match Referee, even though it seems to have been in breach of article 2.1.4 in that it was language that was obscene, offensive and insulting. In my view what Umpire Oxenford heard was much worse than the exchange ascribed to Anderson at the boundary line. I can only assume that a much more robust

Page 4.

approach is taken by Umpires to swearing in the Test arena than I had previously imagined and the boundary exchange does not warrant disciplinary action if the earlier insult directed to Dhoni did not.

(2) & (3) What happened or did not happen in the corridor leading to the stairs to the dressing rooms, requires the physical and oral conduct of Anderson to be considered together. What happened in the next few seconds which it took the two batsmen and the fielding side to get to their respective dressing rooms, depends on who you ask. Certainly the witnesses gave support to two different factual situations (and many varying versions thereof) with considerable enthusiasm and along team lines.

Essentially, the Indian position is that without provocation, Anderson pushed Jadeja in the back causing him to turn around. Jadeja said Anderson continued to abuse him in the corridor and had ultimately pushed him in the back and told him to "f\*\*\*\*\* go back to the dressing room". Jadeja denies any aggression on his part and particularly he denies that he ever turned around or did anything that could be considered aggressive on his part. To the extent that any of the alleged conduct was viewed by other Indian players and team staff members, they support Jadeja's evidence.

According to Anderson's version of the incident it was Jadeja who was the aggressor and without provocation.

In the corridor, as they approached the steps that led upstairs, Anderson said that Jadeja suddenly turned around and aggressively came towards him and "got right up in my face". He said he instinctively put up his hands as Jadeja still had a cricket bat in his hand. He said that he put up his hands in a defensive manner because of the way in which Jadeja came at him. Anderson claims to have been completely taken aback by Jadeja's "aggressive action". According to Anderson, Jadeja's action in walking back to stop in front of him caused Jadeja to block Anderson's way and the way of his team mates who were coming behind him. Anderson said he then used his right arm to push Jadeja's shoulder to get him to turn around and go back towards the Indian dressing room. He agrees he said words along the lines, "f\*\*\* off and get in your dressing room".

Importantly Anderson denies pushing Jadeja in the back or in any way provoking him after entering the corridor.

Obviously one version of the facts must be untrue, but the existing CCTV image is unhelpful and the witnesses hopelessly biased in favour of one party or the other.

The closest I heard to an unbiased account of events was the oral evidence of Senior Steward David Doyle. It is uncontested that he was at the bottom of

Page 5.

the stairs leading to the changing rooms. He said in his written statement that as the batsmen were about to go up the stairs "I saw Jadeja suddenly turn around and start to walk back towards the England players. I couldn't see who exactly he was heading towards. As Jadeja was turning, Dhoni stopped him and turned him back and they both then proceeded up the stairs to the changing rooms."

In his oral evidence by telephone, Mr. Doyle said that Jadeja "took one or two steps back towards the England players". He also said that Dhoni stopped him and turned him back.

Thus I have been confronted by two vastly different versions of the one incident. In one version Anderson is the aggressor both physically and verbally. In the other, Anderson is responding to aggression by Jadeja and the physical contact that I find did occur, was caused by Jadeja, and Anderson's direction to him to go to his dressing room, was a knee jerk reaction to an unexpected physical confrontation.

Ironically, the dilemma I was confronted with, was unconsciously solved for me by Mr. Lewis Q.C. in his final submission. During that submission Mr. Lewis posited his "two push theory" for which there was not an iota of supporting evidence. And that submission I suspect came from Mr. Lewis' frustration in trying to make sense out of two totally conflicting versions of the evidence. It was an effort to find an explanation for the inexplicable, based on the conflicting evidence the Tribunal had heard.

I considered then the different standards of proof pertaining to charges at different levels under the Code, and with a level 3 charge the penalty could be four to eight suspension points or 2 to 4 test matches. In monetary terms the loss of between \$A40,000 and \$A80,000 approx. In my view with potential penalties that severe, for me to be "comfortably satisfied" pursuant to Article 6.1, something close to beyond reasonable doubt was required.

I then turned my mind to downgrading the charge to level 2 pursuant to Article 7.6.5. I considered whether I could be comfortably satisfied that an offence at that level had been committed when the sanction for a first offence potentially equated to between \$A10,000 and \$A30,000 (the fees payable as half of Anderson's fee in the second test and his payment for a further full test match). When a Tribunal is dealing with someone's livelihood, sanctions of that magnitude in my view, certainly require a standard of proof that is more than on the balance of probabilities and again I was not satisfied that an onus requiring a standard of proof at that higher level, had been discharged.

As I reflected on the evidence and the final submissions made by the representatives of the parties, I turned my mind to a possible downgrading of

Page 6.

the charge to level 1. At this point, Mr. Lewis' final submission became relevant. He was helpfully guessing at what might have happened and inadvertently inviting me to do the same. And whatever a Tribunal should or should not do, is to guess to achieve an outcome. In short I do not know on the evidence, and to the relevant standard of proof, what happened in the corridor leading to the stairway in those few seconds after the batsmen and fielding side came in for lunch. I cannot be comfortably satisfied as to the truth of either version of the evidence.

Accordingly, as I have already announced, the charges (in the alternative against Anderson) are dismissed and because I would be no more comfortably satisfied that the standard of proof had been met if I had downgraded them, I have chosen not to adopt that course.

### **Jadeja Appeal**

Turning now to the proceeding laid by the ECB against Jadeja, in relation to which he has appealed, it is a level 2 charge based on a similar set of facts relied on in the Anderson case defence. Here the circumstances are confined to the corridor leading to the stairs to the players' dressing rooms and the evidence advanced in support of the charge comes mainly from Anderson and a number of members of the England team. Certainly, no Indian cricketer or staff member saw Jadeja being aggressive. Once again the conflicting versions of the evidence in respect of what actually happened, leave me in a situation where I could not be comfortably satisfied, to the requisite standard of proof, that Jadeja's conduct equates to a level 2 offence. I am satisfied that personal contact did occur between Anderson and Jadeja but the extent and force of that contact is unknown, despite Jadeja's response in cross examination, that the push was hard and caused him to break stride. That evidence seemed to me to be a recent embellishment, as Jadeja had not previously said this nor had any other witness. In short, I am not satisfied that the level 2 charge against Jadeja has been made out to a standard of proof with which I am comfortably satisfied and as I have previously announced, his appeal against the ruling of the Match Referee is upheld. I am not prepared to exercise my discretion to substitute a lesser charge, as I could not be satisfied even at level 1, that the necessary standard of proof has been met. In the circumstances this matter is also dismissed.

In respect of the ICC and Anderson decision, I am obliged pursuant to Article 5.2.12.2(c) para. (d) to refer to Article 8 of the Code and particularly the right of appeal and the appeal process set out in Articles 8.3.2 and 8.3.3 of the Code.

Finally, as a newly appointed Judicial Commissioner, I urge the ICC to conduct an immediate review of its Code of Conduct, as these proceedings have

Page 7.

highlighted a number of inadequacies in the Code and situations with which it cannot easily cope.

That concludes the reasons for my decisions.  
His Honour Gordon Lewis AM.  
Judicial Commissioner.

3<sup>rd</sup> August, 2014.