

It's just not cricket: ball tampering and unbecoming conduct

John Kerr and Sadaf Din review the decision of the International Cricket Council Adjudicator and how the Code of Conduct and standard of proof was applied to the recent ball tampering controversy at the England v Pakistan Test Match.

Last summer's Test Series between England and Pakistan gave rise to significant controversy when a match was awarded to England after Pakistan failed to take the field in protest against the decision of the chief umpire, Darrel Hair, backed by his three fellow umpires, that the ball had been tampered with. The Pakistan captain, Inzaman-ul-Haq faced two charges under the International Cricket Council (ICC) Code of Conduct. The first was that a member of his team had tampered with the ball in a manner which was not permitted, and secondly, that by his team's refusal to play his conduct had brought the game into disrepute.

The decision of the Chief ICC Referee and Adjudicator (the Adjudicator), Ranjan Madugalle, raised a number of interesting issues in relation to the role of the Adjudicator and the standard of proof applied in regulatory proceedings within sport.

The burden of proving the serious charges rested upon the ICC. Based upon the evidence presented, none of the four umpires, nor the match referee, saw any player tampering with the ball. Nor was any video footage or other photographic evidence presented which established any such conduct. The charge of ball-tampering therefore relied solely on the physical condition of the ball at the 56th over when play was stopped.

It was argued for the ICC that the Adjudicator could only overturn the judgment of the umpires if he was satisfied that their decision as to ball-tampering was perverse, or involved bad faith, or was the result of a misinterpretation of the governing Laws of Cricket. The ICC's submission on the role of the adjudicator relied upon Law 42.2 which states: *"The umpires shall be the sole judges of fair and unfair play. ..."*

However, whilst it was not argued on behalf of the Pakistan cricket captain that the umpires' decision was taken in bad faith or dishonestly, the Adjudicator responded in stating that his own function was to form his own view of whether or not there was ball-tampering in breach of the Laws of the Game. There was nothing in the Code of Conduct which he considered confined his role in the manner suggested by the ICC. On the contrary, paragraph D8(c) of the Code of Conduct states that it is the role of the Referee (and Adjudicator) to: *"investigate and adjudicate upon alleged breaches of the Rules of Conduct notified to him"*.

A distinction was drawn between the umpires being sole judges of events on the field of play (so that the Referee and an Adjudicator cannot revoke a decision to change the ball, or to award penalty runs) and the hearing of a disciplinary charge. Where a disciplinary charge is brought, the role of the Adjudicator is to determine the facts and decide accordingly. The Adjudicator went on to state:

“Indeed, it would be very odd indeed, and very unfair to a player, were I obliged to find guilty a player who is the subject of a serious disciplinary charge and then punish him, even if I am satisfied on all the evidence that he is not guilty, but where I cannot say the umpires were perverse.”

The standard of proof applicable in such disciplinary proceedings is on balance of probabilities. However in the light of the seriousness of the allegations (which amount to serious charge of cheating), it was stated that cogent evidence was required to prove the charge. This view is consistent with the approach taken in the context of other professional disciplinary fields outwith sport. The authoritative speech of Lord Nicholls in the House of Lords decision of *Re H and Others [1996] 1 ALL ER 1, 16* remains instructive on this point: *“the more serious the allegation, the less likely it is that the event occurred, and hence the stronger should be the evidence before it is concluded that the allegation is established on the balance of probability.”*

The Adjudicator was not satisfied on the balance of probabilities that sufficiently cogent evidence was presented to find that the fielding team had altered the condition of the ball. It was held that the marks were as consistent with normal wear and tear, and with the ball being pitched into the rough ground. The charge was dismissed accordingly.

The second charge in respect of unbecoming behaviour by the Pakistan captain in that he deliberately refusing to bring his team back onto the field of play was upheld. Under Paragraph C2 of the ICC Code of Conduct states: *“Players and/or Team Officials shall at no time engage in conduct unbecoming to their status which could bring them or the game of cricket into disrepute.”*

The conduct of the captain was held to undermine *“one of the fundamental principles of cricket that players led by the captain must abide by the decisions of the umpires, however much they may disagree with them and whether or not they have good reason for disagreeing with them”*. Taking into account all the circumstances a ban of four one day international matches, rather than a test match ban, was imposed on the captain.

The ICC Code of Conduct clearly provided that a sanction may be imposed on the captain personally where the umpires were unable to determine the actual culprit. This was not in dispute in the case, but it is interesting that in a professional game not only can the captain's team face a sanction but the captain may do so personally in such circumstances and this may be open to challenge at a future date.

The Adjudicator's conclusions were remarkable in the context of sports disciplinary proceedings for the extent to which criticism was levelled at the umpires for poor player-management and lack of effective communication, which were stressed as important aspects of umpiring at international level. The Adjudicator's decision is a timely reminder in advance of the Cricket World Cup



2007 in the West Indies this month in recognising the need for firm adherence to the Laws of Cricket in ensuring the sporting ethos of the game is upheld whilst preserving the domain of the disciplinary hearing and fair process for players within the game.

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