

BEFORE AN APPEAL PANEL OF THE CRICKET DISCIPLINARY COMMISSION OF THE ENGLAND AND WALES CRICKET BOARD.

1. Determination

An Appeal Panel of the Cricket Discipline Commission (CDC) (Edward Slinger, (Chairman), Ricky Needham, Cliff Pocock, Tim O’Gorman and Mike Smith) sat on 10 December 2012 and between 22 April and 26 April 2013 in the Hearing Rooms of The International Dispute Resolution Centre, London, to consider an Appeal by Danish Kaneria against findings, dated 22 June 2012, of a Disciplinary Panel of the England & Wales Cricket Board (ECB) following hearings occupying 18 – 22 June 2012.

Mr Ian Mill QC & Mr Nick De Marco represented ECB
Mr Tim Moloney QC & Mr Jude Bunting represented Danish Kaneria.

2. Introduction

These proceedings arise from charges brought in relation to events which occurred towards the end of the 2009 English domestic cricket season culminating in a Pro 40 Competition match played at Durham between Essex and Durham on 5 September 2009. The charges alleged:

Danish Kaneria

- i. A breach of 2009 ECB Directive 3.8.5 in that Danish Kaneria induced or encouraged, or attempted to induce or encourage, Mervyn Westfield not to perform on his merits, that is, deliberately to concede a minimum number of runs in his first over of the match between Essex and Durham.
- ii. A breach of 2009 ECB Directive 3.3 in that Danish Kaneria conducted himself in such a manner as might bring the game of cricket or any cricketer into disrepute by inducing or encouraging Mervyn Westfield not to perform on his merits.

Mr Kaneria contested the two charges brought against him. The Disciplinary Panel found both charges proved and he was suspended for life from any involvement in the playing, organisation or administration of any cricket under the jurisdiction of the ECB. He was further ordered to pay the sum of £100,000 by way of contribution to the ECB’s costs of the hearing.

Mr Westfield pleaded Guilty on the first day of the Disciplinary Panel proceedings to a breach of 2009 ECB Directive 3.8.5 on the basis of his having received a reward, resulting from his conduct in that match, which could bring the game of cricket into disrepute. This charge was said to reflect his admission to the Crown Court that he had been paid £6000 for agreeing deliberately to concede a given minimum number of runs in his first over as bowler in that match. He was suspended for 5 years from all involvement in cricket under the auspices of the ECB (subject to permission to participate in club cricket during the last 2 years of that ban). He has appealed against that sentence and the appeal will be heard at a later stage.

3. Grounds of Appeal: Danish Kaneria

By Notice of Appeal dated 8 July 2012 Mr Kaneria appealed as follows:

1. "It is submitted that the findings were against the weight of the evidence. In particular Danish Kaneria asserts that:
 - (i) He was not involved in spot-fixing with Mervyn Westfield or any other person, as alleged or at all
 - (ii) The pattern of phone contact between Danish Kaneria and Arun 'Anu' Bhatt was consistent with social contact for lawful reasons and was not sufficient to provide the necessary corroboration of Mr Westfield's evidence
 - (iii) Danish Kaneria did not intend to encourage any other players to become involved in spot-fixing or other illegal gambling
 - (iv) Danish Kaneria was not given an official warning by Alan Peacock. That evidence, contrary to the findings of the panel, was successfully challenged in cross-examination.
 - (v) The unchallenged evidence of two witnesses called on behalf of Danish Kaneria, namely Faran Kaneria and Mohammed Afzaal Naseer, was entirely at odds with that of Mervyn Westfield as to his presence with Danish Kaneria and Arun Bhatt in Dukes Nightclub, Chelmsford. The evidence of Faran Kaneria and Mohammed Afzaal Naseer went right to the heart of the credibility of Mr Westfield's account. Mr Westfield asserted that he was present in Dukes Nightclub with Danish Kaneria, Anu Bhatt and another man. That other man was skinny, in his forties and had a moustache. It was that man who had later had contact with him and persuaded him to underperform in his first over in the Durham match on 5 September 2009. Mervyn Westfield denied ever meeting Faran Kaneria and said that Faran Kaneria was not present when he met Anu Bhatt. On the other hand, Faran Kaneria said that he was present in Dukes Nightclub with Danish Kaneria, Mervyn Westfield, Anu Bhatt and a blonde woman friend of Anu Bhatt. He and Danish Kaneria later left and were taken home by the taxi driver Mr Naseer. Mr Naseer confirmed the journey. That evidence went completely unchallenged by the ECB.
2. In addition, Danish Kaneria submits that the tribunal applied the wrong standard of proof. The appropriate standard should have been one of beyond reasonable doubt. The tribunal ruled that the case against Mr Kaneria needed to be proved on the balance of probabilities but with an important caveat. Its detailed reasons were as follows:

"The panel is satisfied that in the case of Mr Kaneria and the charges that he faces the appropriate standard of proof to be applied is that on the balance of probabilities, but, as has been said, there must be a generous degree of flexibility so far as that standard is concerned. Insofar as this panel is concerned, having regard to the nature of the allegations Mr Kaneria faces and the possible consequences of those allegations being established, we are unanimously of the view that we shall look for evidence which compels us beyond reasonable doubt to arrive at a conclusion adverse to him".
3. Without prejudice to Mr Kaneria's appeal against the findings of the ECB Disciplinary Panel in respect of 2009 Directives 3.8.5 and 3.3, Danish Kaneria appeals against the life ban imposed on him by the ECB Disciplinary Panel. It is submitted that the life ban was excessive.
4. Danish Kaneria appeals against the order of the ECB Disciplinary Panel that he pay £100,000 towards the legal costs of the ECB. It is submitted that the 2009

Regulations were those which applied to this case. They were the only ones signed by Mr Kaneria. Those regulations limited the costs to be paid by the losing party to £2,000.

5. Without prejudice to the argument that the 2009 Regulations should have been applied in the proceedings below, it is submitted that the figure of £100,000 awarded against Mr Kaneria was not reasonable in all the circumstances.”

4. Burden and Standard of Proof.

These issues were argued before the Panel on 10 December 2012, Mr Westfield having failed to appear to give evidence.

a. Burden of Proof

The Decision of the Disciplinary Panel recorded “the burden of proving the charges falls on the ECB who bring them.” No submissions were made that this was not the right approach at that stage.

In what he accepted was “very much a last-minute analysis”, Mr Mill submitted that as the hearing was to deal with issues raised in the notice of appeal, it was for Mr Kaneria to bear the burden of proving his case on the balance of probabilities and that logically, in procedural terms his case should go first.

Mr Moloney’s brief submissions were that on a complete re-hearing the burden of proof did not alter.

Decision.

The case being a complete re-hearing, the burden of proof remained on the ECB.

b. Standard of Proof.

The Decision of the Disciplinary Panel recorded: “The Panel concluded that in realitywe should be sure of any fact before we relied upon it as proving a case against Danish Kaneria.”

It was common ground that the CDC Regulations were silent as to the correct standard of proof.

Detailed legal submissions had been placed before this Panel in relation to the requisite standard of proof, Mr Kaneria seeking the criminal standard and the ECB what was described as the “flexible civil burden”.

Decision.

Agreement was reached between the parties that, having regard to the complexities and importance of this case and the nature of the allegations made, the standard expected of the ECB was “the equivalent of the criminal standard” - the alternatives sought by the parties being “in practice indistinguishable.” The Panel accepted that agreement and has proceeded on that basis – before, therefore, either charge were proved, the Panel would have to be sure that the ECB had proved its case.

The Panel has reminded itself that, as there were two separate charges, each should be examined separately but it was not suggested that there were any evidentially different requirements and neither side, in its submissions, sought to

distinguish between them so far as findings were concerned. It was accepted that conduct of the kind specified in the first charge brings the game of cricket and cricketers into disrepute.

5. Elements of Charges

It was submitted by Mr Moloney, and not challenged, that the wording of the charges required specific proof that Mr Kaneria had induced or encouraged, or attempted to induce or encourage Mr Westfield to concede a minimum number of runs, in his first over of the Durham match. It was not sufficient, for example, to show that Mr Kaneria had put pressure on Mr Westfield to spot-fix in general. The Panel has accepted that submission.

6. ECB case

In general terms, it is alleged that in August 2009, Mr Kaneria resumed contact with Mr Bhatt, a long-standing acquaintance whom he knew to be involved in corruption, and met up with him and another acquaintance – a thin man with a moustache. Mr Kaneria effected an introduction to Mr Westfield, there were a number of meetings at some, at least, of which Mr Kaneria was present in which Mr Westfield was persuaded to underperform and concede a minimum number of runs in his first over in the Durham match. Mr Kaneria took an active part in that persuasion and, he was present in the early hours of 6 September 2009 when, some hours after the match had finished, Mr Westfield was paid £6000 in cash.

In support of its case the ECB called oral evidence from Mr Westfield, Alan Peacock and Antonio Paul Palladino (Tony), all of whom had given evidence before the Disciplinary Panel, and written evidence was taken from a number of other Essex players. The ECB submitted also a substantial amount of documentation, primarily telephone and text message records by way of corroborative evidence. Some of this evidence had been obtained subsequent to the Disciplinary Panel hearing. The evidence from a number of Essex players related to alleged conversations involving match fixing and the like, evidence which was submitted as significant in assessing the truth as to the core issues in the case.

7. Mr Kaneria's case

In general terms, Mr Kaneria denied entirely the allegations against him. He accepted that he had known Mr Bhatt for some years, and that he had been warned of his background. He had been contacted by Mr Bhatt in August 2009, had communicated with him until early September and met him at Duke's night club, an occasion when Mr Westfield was present. He denied, however, that this meeting took place when alleged by ECB and denied presence at any meetings at which anything dishonest took place. Specifically, he had not been aware of, nor did he himself take part in, any attempts to persuade Mr Westfield to underperform. Mr Westfield's evidence as to his involvement was lies and although he accepted that there had been match fixing conversations with some players, they had been of a jovial nature and were not sinister. During his communications with Mr Bhatt he had been fully aware of the ICC's Anti-Corruption Guidelines and sought to keep Mr Bhatt at arm's length.

A number of witnesses were called on his behalf primarily to support his evidence as to the night club meeting and by way of character evidence.

8. Background Facts

Danish Kaneria is a Pakistani national and a professional international cricketer of great repute and experience. He played for Essex County Cricket Club for 6 seasons between 2004 –2010 as an overseas player. He signed annual undertakings to abide by the ECB's Rules Regulations and Directives whilst registered at Essex.

Mervyn Westfield was a professional cricketer with Essex from 2005 until 2010. In that time, he played 7 County Championship matches and 8 first team one day matches.

Mr Westfield was criminally charged in September 2010 with accepting a corrupt payment (£6000) contrary to section 1(1) of the Prevention of Corruption Act 1906 and on 12 January 2012 he pleaded guilty to that charge. On 17 February 2012, he was sentenced to a term of 4 months imprisonment and the £6000 was confiscated.

Arun or "Anu" Bhatt is an Indian businessman who, prior to November 2007, had come to the notice of the Anti-Corruption & Security Unit of the International Cricket Council (ACSU) as allegedly being heavily involved in illegal betting.

9. Evidence before the Panel.

Specific Evidence

As already indicated, the Panel heard oral evidence from Mr Westfield, Mr Peacock and Mr Palladino and also from Mr Kaneria, all of whom had given oral evidence before the Disciplinary Panel. Their evidence incorporated written statements served in the proceedings, as amplified and cross-examined before this Appeal Panel.

It was agreed by the parties that evidence of other witnesses would be given by way of written statements and transcripts of oral evidence given before the Disciplinary Panel. Evidence given in this way was not to be treated as agreed evidence, unless specifically so agreed, but was to form part of the evidence as a whole subject to submissions in relation to its evidential value and reliability.

The witnesses whose evidence was considered on that basis were:

(ECB Witnesses)

Mark Lewis Pettini (Essex CCC)
James Savin Foster (Essex CCC)
David Daniel Masters (Essex CCC)
Christopher Julian Clement Wright (Warwickshire CCC, formerly Essex CCC)
Varun Chopra (Warwickshire CCC, formerly Essex CCC)

(Witnesses for Mr Kaneria)

Dharmeta Kaneria (wife of Mr Kaneria)
Vikrant Kaneria (elder brother)
Faran Kaneria (cousin)
Mohammed Afzaal Nasir (Taxi Driver)
Paul Grayson (Head Coach Essex CCC)
Tom Westley (Essex CCC)

Much of the background evidence was not disputed.

The major evidence was that given orally by Mr Westfield and Mr Kaneria and it was clear that their two versions in relation to the central events could not live together. Their evidence was the only direct evidence in relation to most of the disputed meetings and the Panel, in conjunction with assessing the corroborative value of other evidence, was required to make a considered judgment in relation to their respective credibility on significant disputed issues.

This Panel may decide its own procedures and admitted, as did the Disciplinary Panel, some hearsay evidence - primarily what was said to have been told to Essex witnesses by either Mr Westfield or by others in the absence of Mr Kaneria. Neither Counsel chose to call those witnesses in person but the Panel is required to and did consider the inherent weakened evidential value of hearsay evidence.

The ECB placed substantial weight on circumstantial evidence based on the documentary evidence - largely the telephone and texting records. Mr Kaneria, in turn, drew the Court's attention to a VIP card for Dukes nightclub in Chelmsford as, amongst other things, evidence of untruthfulness of Mr Westfield. The Panel has reminded itself that circumstantial evidence could be powerful evidence provided that it was based on reliable facts and assisted in bolstering or undermining the ECB case.

All aspects of the evidence were taken into account with the overriding proviso that the burden of proof remained with the ECB and that the accepted standard of proof meant that if the Panel believed that what Mr Kaneria said, on the significant matters, was or might have been true, it was for the Panel to return Not Guilty decisions.

10. Further Background and Non-contested Matters

a. Chronology

<u>2005</u>	May/June 2005	Mr Kaneria met Mr Bhatt during a tour of the West Indies.
<u>2007</u>	November 2007	Mr Kaneria, with his wife and with other players, attended a dinner party at Mr Bhatt's house in Delhi.
<u>2008</u>	5 April 2008	Meeting between A. Peacock and Mr Kaneria – Mr Kaneria was warned about Mr Bhatt
<u>2009</u>	Mid-August 2009 29 August 2009	Mr Kaneria contracted to Essex for season but away in Sri Lanka for 1 month in July – returned to UK at end of July. Mr Kaneria said he was contacted by Mr Bhatt.
	5 September 2009 7 September 2009	1 st record of telephone contact Mr Bhatt to Mr Kaneria. Durham v Essex. Last recorded telephone/text contact between Mr Kaneria and Mr Bhatt
<u>Winter 2009/10</u>		Both Mr Kaneria and Mr Westfield out of UK – in Pakistan and Australia respectively.

<u>2010</u>	
About 10 March 2010	Essex players team meeting. Mr Kaneria said to have been present and, along with Mr Westfield, to have denied allegations.
March/early April 2010	Initial statements to Essex Police by Essex players.
29 March 2010	Mr Westfield interviewed by Essex Police
14 May 2010	Mr Kaneria interviewed by Essex Police.
16 September 2010	Mr Westfield charged.
<u>2011</u>	
May 2011	Mr Westfield's Defence Statement – first allegations of approach by Mr Kaneria - denies receiving cash
<u>2012</u>	
12 January 2012	Mr Westfield's Draft Basis of Plea and Guilty plea – further allegations against Mr Kaneria and others, and acceptance of payment by Mr Westfield.
9 February 2012	Mr Westfield's Pre-Sentence Report – continued allegations but Mr Westfield denied underperforming.
17 February 2012	Mr Westfield's Plea to accepting corrupt payment accepted. "Cheating "Count not pursued: sentenced to 4 months imprisonment. ECB witness statements filed.
5 April 2012	Mr Westfield – 1st ECB witness statement.
27 April 2012 (after release from prison mid April 2012)	
18-22 June 2012	Disciplinary Panel hearing.
10 December 2012	Appeal Panel hearing – Mr Westfield failed to attend
<u>2013</u>	
22-26 April 2013	Appeal Panel Hearing.

It was, therefore, over 3 ½ years between the August/September 2009 events and the date of the Appeal Panel hearing and there were substantial time gaps between various stages.

b. Agreed or undisputed facts.

- i. That Mr Westfield deliberately did not bowl to his merits in the first over and was paid £6000.
- ii. That the money was paid for underperforming from two Asian men, one of whom was Mr Bhatt, involved in unlawful gambling in the Indian sub-continent.
- iii. That Mr Kaneria and Mr Bhatt met in 2005 and in 2007 Mr Kaneria was entertained in Mr Bhatt's home and that gifts were given to Mr Kaneria and his wife.
- iv. That in April 2008 Mr Kaneria was alerted by Mr Peacock, an ICC ACSU Investigator, to Mr Bhatt's unlawful activities including making or attempting to make inducements to cricketers to underperform. Mr Kaneria was specifically told not to associate with him and thanked Mr Peacock for the warning.

- v. That telephone records show that, despite the warning, Mr Kaneria had further contacts with Mr Bhatt including socialising, describing him as a friend and storing his mobile phone number on his own phone.
- vi. That in the period 29 August 2009 to 7 September 2009 there was substantial telephone and texting contact between them.
- vii. That on his own evidence, Mr Kaneria invited Mr Bhatt to meet him in Duke's night club and provided him with 2 complimentary tickets for the Durham match.
- viii. That Mr Kaneria was present when Mr Westfield first met Mr Bhatt.
- ix. That despite his knowledge of the dangers presented by Mr Bhatt to cricketers and despite knowing Mr Westfield was a young, inexperienced player he gave no warnings to him about the dangers of contact with him.
- x. That although there was considerable telephone and texting contact with both Mr Bhatt and MW in the days leading up to 5 September, there is no record of any call between Mr Westfield and Mr Bhatt.
- xi. That tickets were sought and provided for the Durham match although Mr Bhatt had apparently said he had earlier been staying somewhere about the Essex area and the match was in Durham and televised.
- xii. That at around the time Mr Bhatt was in the UK Mr Kaneria was involved in discussions with other players in which match fixing and the like were discussed, although he denies instigating the discussions or that they were other than jovial banter.

11. Evidence before the Panel

a. ECB Evidence.

i. Documentary Evidence

The Panel was supplied with telephone records as follows:

Mr Westfield – incoming and outgoing mobile phone contacts with Mr Kaneria: - 1 to 30.8. 2009.

Mr Kaneria - incoming and outgoing mobile phone contacts with Mr Westfield and Mr Bhatt - 31.8.2009 to- 1.4.2010

Mr Kaneria - outgoing calls 28.4.2009 to 31.9.2009 (which records were not available to the Disciplinary Panel and do not include entries for July 2009 when Mr Kaneria was in Sri Lanka).

ii. Oral Evidence

Mervyn Westfield, in a statement made on 27 April 2012 shortly after his release from prison, stated that since beginning to play for Essex in 2005, he had known Mr Kaneria during his periods with the County. They socialised together in clubs and restaurants but before "September 2009" he had never previously been to his house.

In August, one evening following a telephone call from Mr Kaneria, he was picked up by him and taken to Mr Kaneria's home where he met two Asian men, the fatter of whom he subsequently identified as Mr Bhatt. During that visit, Mr Kaneria took him on one side, away from the two men, and said something to the effect of "you are young, it's hard to make money at this time, I have a way that you can make money quicker." He explained that the two men would pay money to cricketers to "spot-fix" and that between £20,000 and £25,000 would be paid for fixing one over. Nothing

further was mentioned that evening. Late that evening at about midnight all four went to Duke's Night Club and he remained with them the whole evening. The thinner Asian man (X) paid for entrance and "flushed his money about", paying for most of the drinks that evening which ended when Mr Kaneria returned him to his own flat at about 3 a.m.

One or two days later the two men arrived at the Essex training ground and he was approached by X at the back of the training ground where the car park was. X asked him to try to concede 12 or more runs in his first over and said he would be paid for doing so.

A day or two later, he knew he was in the squad for the Durham game. He believed he had received a telephone call from Mr Kaneria who knew he was going to Durham, asking did he want to "do the Durham game". He took this to refer to the conversation with X and claimed to have replied "Not really." He also claimed that during the period leading up to that game, Mr Kaneria had told him that the men had approached other members of the team including Mark Pettini.

Subsequently he was pressured by telephone by one of the men – he thought X, on a number of occasions, saying things to the effect of "I'm coming all the way up there so don't let me down" and that he (X) had already phoned India and put money on the game so he had to do it. Mr Westfield claimed to have said throughout that he did not wish to do it.

In Durham, the night before the match, he had dinner with Mr Kaneria, was then taken by him to a hotel room occupied by the two men where he was told that money had been put on the game, that it would be lost if he didn't do as asked. There was continuous pressure from them, supported by Mr Kaneria who frequently urged him to do it using words such as "it will be easy", "you won't get caught", "if you don't do it you will make a lot of people very unhappy" and "lots of people have put money on the game, you have to do it." He himself claimed to have been angry, but they, too, speaking in their own language, were also angry. After an hour's pressure, he had agreed.

On the day of the match, after training, Mr Kaneria checked that the agreement would be carried out and he, Mr Westfield, confirmed it.

After the game, in which he conceded 10 runs in that first over, they returned on the team coach and in the Chelmsford car park, the two men were waiting. He was offered a lift home by Mr Kaneria, the men got into the car and X, sitting with him in the rear seats, gave him a carrier bag containing bank notes. Mr Westfield claimed to have queried the payment on the basis that he had not conceded the agreed number of runs, but the man did not appear concerned.

On his return home, he placed the money in his wardrobe being unsure what to do with it and, only at that stage, realised it was £6,000.

Cross examined by Mr Moloney:

He accepted that he had been reluctant to attend the hearing – he considered it to be the ECB's and Mr Kaneria's case and not his fight. Asked whether a statement had been prepared to be read to the media by his Counsel in which he referred to promises made to him a year ago, he claimed not to be 100% sure. In any event, he considered that his ban had been a bit too long and he had been let down by the PCA with whom he had been in discussions about the making of a video and

appearing on radio. He had been let down by ECB whom he considered had got what they wanted and washed their hands of him. He claimed not to have really known of the efforts to secure his attendance after his failure to attend the December 2012 hearing. He acknowledged a meeting with ECB representatives at which he had asked for an apology for the way in which he had been treated, a letter by way of recommendation or reference for his appeal and a job. He claimed that his non-appearance in December had been both because it was not his fight and also because he had been ill. He was reminded of the agreed medical evidence which referred only to vomiting and diarrhoea for which his GP had provided a medical note excusing his attendance for 3 days. He was further shown evidence of his, apparently vibrant, presence in Jamaica in January and said that he was appearing before the Appeal Panel only because otherwise he would be arrested because of the witness summons obtained by the ECB.

On the second day of his evidence, on being confronted with a Press Statement made on his behalf, he claimed not to have accepted its existence the previous day because he was nervous and hadn't known what to say.

So far as the case was concerned, he acknowledged a series of changes of version and lies throughout the period from his arrest until he was sentenced.

He had denied to the Police he had received any money, denied telling Palladino that he had received money or that Mr Kaneria had also had "a cut" and denied showing money to Palladino. He had claimed to have been approached by a skinny man for a number of games including both Durham and Somerset but that Mr Kaneria was not involved.

In his Defence Case Statement, he had denied accepting payment to underperform deliberately or that he had admitted this to Palladino, denied receiving cash but, whilst still denying any offence, said he had been introduced by Mr Kaneria to two men at Mr Kaneria's home and been put under pressure by Mr Kaneria to which he did not accede. He also said that he had told Palladino that he had been offered money by associates of Mr Kaneria.

In his draft Basis of Plea he said he had been to Mr Kaneria's house twice and that on a number of occasions he had been asked to accept money for bowling in a particular way by Mr Kaneria and his associates both by telephone and in person, often on apparently chance meetings. In interview for the Pre-Sentence Report, he had still claimed not to have underperformed.

A deal had been done between his lawyers and the Prosecution under which the cheating Count was not proceeded with but he pleaded guilty to the lesser offence of corruption for which it was not necessary to admit underperforming.

Finally in mitigation at Court, through his Counsel, it had been said that he went twice to Mr Kaneria's house to meet the two men. He had continued to deny underperforming.

In commenting on these discrepancies he pointed out that these events occurred nearly four years ago and he was not 100% sure of detail and could not really remember whether he showed the money to Palladino or went twice to the house.

He denied being willing to lie to "get things out of people" – by the time of the last hearing he had just wanted to get it all over with, he had been stupid to lie and had told the truth at the last hearing.

Date of Meal at Mr Kaneria's home followed by Duke's.

He claimed to have been unsure of dates and accepted that it would have been unlikely to have been the Monday (31 August 2009) if there had been training on Tuesday (1 September 2009) but could have been if there were no training or match on the Tuesday. In mitigation on sentence it had been said that Mr Kaneria had become more friendly and was inviting him to his house occasionally for a meal or to restaurants and possibly something else afterwards. His evidence before the Appeal Panel was that it was the first occasion he had eaten there. The two men had been present at the house. He did not believe that Duke's used VIP cards.

Training Ground.

The tall man with the moustache had explained that he had to go for 12 or more runs in an over. They then had driven him home. On its being pointed out to him that there had been no mention previously of getting into a car, Mr Westfield said that he was unsure whether or not he walked home.

He claimed that Mr Kaneria had been involved in "the plan" although he had not texted about it. He, himself, had not gone to the management because he was young, didn't really know what was going on - when stuff goes wrong he just keeps it inside.

The day before the game Mr Kaneria just asked if he was still going on with it.

Match Video.

It was suggested that he would have been feeling sick in the stomach coming in to bowl the over. He replied he wasn't in the right frame of mind. It was pointed out that he had appeared to be smiling and replied "there is a difference between a real smile and a fake smile."

Car Park back In Chelmsford.

He was given the lift home by Mr Kaneria who was the only one who lived near him at the time. He was dropped off first and couldn't say where the men were taken but "probably to his home."

Approaches about Somerset game.

The same man had asked him if he wanted to do the Somerset game. He accepted that this had not been included in his statement or said in mitigation and was not 100% sure when it had happened although he thought it was maybe the same night he got home from Durham. He had said "No".

Afterwards

He claimed that there was "a little bit" of difficulty between him and Mr Kaneria – it wasn't like it was. On being shown records he accepted that there had been continuing socialising and lifts to work and texts until 21 September.

Alan Peacock, a Senior Investigator in ACSU informed the Panel that Mr Kaneria had attended the ACSU education programme in January 2003 and March 2006. All international players were required to attend the programme which focussed on methods used by would-be corruptors including grooming, gifts, false sponsorship deals and coercion.

On 5 April 2008, he interviewed Mr Kaneria to seek information about Mr Bhatt whom he described as being heavily involved in illegal betting. Mr Kaneria had accepted

knowing Mr Bhatt, having been introduced in the Caribbean in 2005. He had indicated that he had had dinner with him on a few occasions and once, during a 2007 India/Pakistan test match in Delhi, with other players and with his wife and child, he had been to dinner at Mr Bhatt's home in Delhi. Mr Kaneria had claimed to believe Mr Bhatt was "in the oil business" and that both he and his wife had received gifts from him and subsequently Mrs Bhatt and his wife had met on other occasions. In common with other team members he had received gifts of clothing and a mobile phone. He had denied any corrupt approach from Mr Bhatt or that they had ever discussed gambling, nor had he ever made an approach to him or asked for inside information.

Mr Peacock had warned Mr Kaneria that Mr Bhatt and an associate named Gupta were "highly inappropriate" company, reminded him of his obligations under the then current ICC Code of Conduct, emphasising, in particular, sections relating to receiving reward for provision of inside information and failing to report any corrupt approach.

Mr Kaneria's response had been to thank him for the warning and to say that he had no idea of Mr Bhatt's connection to illegal betting. Mr Peacock had told Mr Kaneria that Bhatt and Gupta had been attempting to corrupt players and they knew that Gupta had previously been involved in corrupting players. As there was no evidence of corruption at that time, he was able only to give advice, as opposed to an official warning. The advice had been not merely to avoid being in the same room alone but to have nothing to do with them, not to meet them. He had spoken to other players and to the Team Manager.

Mr Peacock's understanding had been that Gupta was in charge of the book and that Bhatt had been a middleman working for him and had gone to other players and made approaches which had been turned down.

Tony Palladino, currently of Derbyshire CCC, but in 2009 on the Essex staff, gave evidence that he and Mr Westfield were friends. Mr Westfield was quite insecure and easily influenced but often loud and brash. On a Monday night, which initially he had thought was 7 September 2009, 2 days after the Durham game, they went together to Dukes Night Club, where they met two girls whom they took back to Mr Westfield's house. In Mr Westfield's bedroom, whilst the girls were not in the room, Mr Westfield said he had something to show him, took a plastic bag from a wardrobe, tipped it onto the bed and bundles of £50 notes fell out. Mr Westfield told him the amount was £6000, that he had been approached by Mr Kaneria and told that he had a friend who would give money if he went for more than 12 runs in his first over against Durham. He had been paid this cash and further said that Mr Kaneria had received £4000 for arranging the deal.

He said he was up for training at 7.30 the following day and "over the course of the next few days", he told Chris Wright (with whom he shared a flat) about the money and what Mervyn Westfield had said about it.

Asked by Mr Moloney if he had told Chris Wright about it the following morning he replied "Yes" but he was not 100% certain if he had told him every detail but he had spoken about the incident. He further accepted a suggestion from Mr Moloney that it would have been important to have mentioned "the core of it" – that money was paid to Mervyn Westfield, that it was to do with corrupt cricket and that Danish Kaneria was involved.

Although initially, he had thought the incident had occurred on 7 September, on subsequent reflection, bearing in mind the team's match at Taunton on 8 September, he believed it must have been the following Monday 14 September. It was a Monday which was Students' Night at Duke's. It could not have been as late as 21 or 28 September because he knew they had been due for training the following day and, throughout his career, they had never trained as late as 21 or 28 September.

He had spent the winter playing cricket abroad and, on return, was approached by the Police to whom he gave a statement on 11 March 2010. The following day, there was a dressing room meeting of the whole Essex playing squad, a meeting at which Mr Westfield and Mr Kaneria were present. He had said what had happened but both Mr Westfield and Mr Kaneria had denied everything. He described the meeting as something of a kangaroo court in which questions had been shouted and after a while some players had walked out.

He also recalled one further incident in the Essex team bus on the way back from an away game at about the time of the Durham match. At that time, Essex could not win its Pro 40 League group. He was speaking with Mr Kaneria and the Captain, Mark Pettini. He could not remember who else was involved in the conversation. He remembered Mr Kaneria saying something to the effect of "we can't win our league, but we can make some money from these remaining group games". None of others present took it seriously, the conversation moved on and he thought no more of it. He did not accept a suggestion from Mr Moloney that nothing of the sort was said in his presence.

iii Statemented Evidence.

Mark Pettini was Captain of Essex between June 2007 and June 2010.

Following a bad start in the 2009 Pro 40 Competition, Essex played three matches in 6 days, at home against Hampshire (3 September), away at Durham (5 September) and away at Somerset (8 September).

In the team coach travelling on the way down from Durham to Somerset, there was a conversation involving him and other players including David Masters, James Foster and Mr Kaneria in which Mr Kaneria began to talk about match fixing and spot fixing, a topic which he, Pettini, described as "an absolutely taboo subject" and "wholly inappropriate thing for him to be talking about, even flippantly." Mr Kaneria was "more than generalising" on the subject and spoke specifically about people he knew who would pay considerable amounts of money to influence the outcome of matches or to make specific things happen in a match.

They knew that the highest Essex could come in the League was 4th and what that meant in terms of prize money and Mr Kaneria intimated that they could all make more money in this way, during the remaining Pro 40 matches, than by playing them out properly to the best of their abilities and taking the competition prize money on offer. His memory was that it was Mr Kaneria who initiated the conversation, not that he joined a discussion already in progress. None of them had taken seriously what Mr Kaneria was saying.

It had been his recollection that they had stayed at Durham after that game and that the conversation was on the way back from Durham travelling to Somerset. Mr Moloney did not pursue the point commenting "as you say it's a long time ago."

He also thought that Tony Palladino was on the coach but could not remember if he had been part of the conversation.

Mr Pettini claimed that on the day following the Somerset game he had received a telephone call from Mr Kaneria to say that he had a friend who wished to meet him. This was unusual because, although they socialised together from time to time, he had never previously been contacted to meet any of Mr Kaneria's friends. He was on his way to visit his family and said he could not meet. He did not remember any other phone call or conversation about an Asian university student who wanted further trials with Essex.

On about 3 March 2010, he had been approached by David Masters and been told, in the presence of James Foster, that Tony Palladino had become aware of an allegation that Mr Westfield had been paid £6000 to concede 12 or more runs in his first over in the Durham game. He immediately spoke to Tony Palladino who told of being shown, the previous September, £6000 in cash paid, it was said, with Mr Kaneria's knowledge, by a bookmaker friend of Mr Kaneria, in return for Mr Westfield bowling in that way. Mr Pettini immediately reported the situation to Paul Grayson, the Essex Head Coach and the Police were contacted.

He indicated that David Masters, their senior and most successful bowler might well have been rested under their rest and rotation policy and that, at that stage of the season, it was a chance to assess Mr Westfield's progress. It would have been known that he was in the squad for the Hampshire and Durham games and given his bowling performance in the previous game (Hampshire) he would always have played in the Durham game although the team would not finally have been announced until half an hour before the game.

He considered Mr Westfield to be an impressionable and vulnerable character.

James Foster recalled a conversation towards the end of the 2009 season on the team coach. Involved were Mr Kaneria, Mark Pettini (then Captain) and David Masters with possibly other listening in. The discussion centred around how money could be made by fixing events in domestic matches and the involvement of Captain, wicket keeper and bowler. At the time he considered it light hearted banter which he did not take seriously.

In evidence before the Disciplinary Panel, he did not recall whether cards were being played. He thought he was sitting towards the middle of the coach which might have been a different coach from that normally used. He had considered it just a bit of fun and that they thought Mr Kaneria might have some information because of allegations at that time about corruption in Pakistan. He had not taken it seriously as the thought of it occurring in domestic cricket had never occurred to him. He had joined in a conversation which had already begun and couldn't say who had initiated the conversation.

David Masters claimed to remember more than one occasion towards the end of the 2009 season when there had been talk about getting cash for fixing a match or events in a match. Specifically there was one occasion on a coach journey, in early September 2009, travelling to Somerset when he was involved in a discussion with Mr Kaneria, James Foster and Mark Pettini. He specifically heard Mr Kaneria talking about how to earn extra money by fixing a match or an event during a match. Mr Kaneria had said "I'll call them now" meaning that someone he knew would pay to fix a game. Mr Masters had not, however, taken it seriously, considering it to be friendly banter. He confirmed that, in a Police statement he had said that Mr Kaneria had, on a couple of occasions, joked about getting cash to fix a match but he had said he thought it to be just banter and "I never thought he was serious."

He told the Disciplinary Panel that he didn't think cards were being played because they were in a different coach which did not have tables. He could remember parts only of the conversation but it was Mr Kaneria who "was telling us about it."

He also said that Mr Kaneria and Mr Westfield had been hanging around together a lot more than usual towards the end of the 2009 season.

Christopher Wright's evidence related to a conversation, shortly after the Essex v Durham match, between him and Tony Palladino with whom he had shared accommodation during the 2009 season. He had been told by Mr Palladino that Mr Westfield had shown to him a large amount of cash, said to be £6000 and that Westfield had said to him that he had been given the money by an Asian male friend of Danish Kaneria to arrange and fix the amount of runs which Westfield conceded in the opening over of the Durham match. He remembers being particularly angry because Westfield had been picked ahead of him in the match and he had been 12th man.

He had also said to the Police that he recalled seeing an Asian male speaking with Mr Kaneria at the Durham match "although I cannot comment on whether this was the same Asian male who was involved in the fix." In a statement made to the Police in March 2010, he had said that the conversation was in the Essex team area during the match but he had not paid much attention as Asian cricketers, especially the international players, had huge followings of fans who attended games.

Cross examined by Mr Moloney before the Disciplinary Panel he had accepted, "given the time difference between actually the event happening and giving a statement", that there might have been some confusion of detail between his original Police statement and his ECB witness statement leading to the possibility that Palladino had spoken on 2 separate occasions. It was possible that there was reference to the money having been given by an Asian friend of Mr Kaneria on a later occasion than when he had been shown the money.

Varun Chopra said that on the "weekend of 1-2 September 2009", the weekend prior to the Essex v Hampshire game (Note: the bank holiday week-end dates were 29 – 31 August 2009), he had received a telephone call from Mr Kaneria. It had not been unusual for him to be phoned by Mr Kaneria; they were friends and both Hindus. During this call Mr Kaneria had said words to the effect that "you can make a lot of money off the field, there's ways of making money, you don't have to lose a game." Mr Kaneria was being jovial and he, Chopra, laughed it off by saying something like "No Danny, that's wrong. I'll never do such a thing."

He thought that the phone call was on a Saturday when they had a period of three televised games the following week. He had known that Mr Kaneria had friends coming over during that week but he didn't know for how long or what dates "They were meant to be there for that week." Questioned by Mr Moloney before the Disciplinary Panel, Mr Chopra agreed that this information did not appear in his statement to the Essex Police.

Further cross-examined before the Disciplinary Panel, he had said that he did remember Mr Kaneria saying that he was going to make a lot of money off the field with cricket.

He agreed, however, that in his Police statement he had said that setting up games was something which was often joked about in the changing rooms – not so much

about setting up games as jokes if, for example, a bowler bowled his first ball wide down the leg side. Through the PCA, they had been briefed about things upon which there could be betting in cricket.

b. Evidence for Danish Kaneria

i. Oral Evidence

Danish Kaneria

In a statement made on 24 May 2012, he stated that, along with the rest of the Pakistani squad, he had been introduced to Mr Bhatt in the Caribbean by the Assistant Team Manager. He was said to be a friend of the team manager, a cricket fan there to watch one of their matches. In 2007, along with many guests including other team mates and some wives, he went to dinner at Mr Bhatt's home in Delhi along with his wife and child. In accordance with local culture, guests were given presents and subsequently, in an extended stay in India, following further kindnesses, they became friends.

In April 2008 on the instructions of Pakistan's General Manager of International Cricket he and other members of the Pakistan team were instructed to meet Mr Peacock. He saw Mr Peacock alone and identified a photograph as that of Mr Bhatt. He had told Mr Peacock of the Delhi dinner and of having seen Mr Bhatt on a few occasions at the Pakistan team hotel although on these occasions there had been "no specific attempt" by either to communicate with the other. After discussions, he was told that Mr Bhatt was known for making inappropriate approaches to players and was "highly inappropriate company to keep." He was given no written warning nor, subsequently, any warning, written or oral by the PCB. He had interpreted the position to be that he should be cautious as to the people with whom he associated, not to meet Mr Bhatt alone, receive any gifts from him, give him privileged information and be careful in any future dealings with him. Mr Bhatt had made no illicit approaches to him.

In 2009 he began his Essex season on 29 April, left for Sri Lanka on 29 June and returned to the UK in August.

He had known Mr Westfield as a player coming up through the ranks and, as he lived nearby, he would from time to time give him lifts to training – this being not uncommon with players generally. Some team mates had occasionally stayed overnight and Mr Westfield had visited his house previously.

"In the summer of 2009", he was contacted by Mr Bhatt who, after family pleasantries, said he was in the UK for a short while and would visit him and possibly watch a match if he were in the area. He was uneasy about speaking to him but because of his own nature, culture and the way Mr Bhatt had treated his family, felt obliged to speak to him when he called, particularly bearing in mind that no illicit approaches had been made.

Mr Westfield's versions of events leading up to the Durham game had been "wholly inaccurate."

30 August 2009 following a late awakening, he had been joined at his house by his cousin Faran Kaneria. Later in the day he had called Mr Westfield to suggest socialising together with his visiting cousin. As he lived round the corner, they often went to a training session or game together "and it was often the case that I would

call him first to ask if he wanted to go out.” Later whilst he was shopping for groceries, he was called by Mr Westfield and arranged to collect him. He called him just before reaching his house, took him home at about 8 pm where, after drinking alcohol with Faran, it was decided to send for a pizza which they ate at about 10 p.m. There were no other Asian men present and no approach was made about match fixing. They agreed to go to Duke’s. At some stage, he received a call from Mr Bhatt to say he was in the area and wanted to meet so told him that he could come to see him whenever he was in Chelmsford and that he could join them in Duke’s if he wished. At 11 pm he called a cab and went into town. By using his VIP card, they were able to get in free and stood drinking in the club. Later they were joined by Mr Bhatt and a female. Whilst he greeted Mr Bhatt, Mr Westfield spoke with the woman but in the jovial atmosphere the group as a whole were also talking. “After some time” Mr Bhatt and the woman left, Mr Bhatt having said he might come and watch a game if he got the chance and would call for complimentary tickets. During the night Mr Westfield was with other friends and he and Faran left the club at about 3 a.m. in a cab driven by Mohammed Afzaal Nasir, whom he knew well.

The suggestion that he and Mr Westfield left the Club in his car with the two Asian men was untrue.

4 September 2009 – Journey to Durham.

The journey took about 5 hours.

Whilst on the coach, he received a call from Mr Bhatt asking for complimentary tickets for the match. He was “extremely surprised” that he would come from the Essex area to Durham when he could have watched a match in Chelmsford but “at the time I did not think anything more about it.” He was asked for a couple of complimentary tickets which Mr Bhatt said he would collect from the team hotel but, “as I wanted to avoid meeting him, I told him tickets would be available only the next day”. He would get the tickets delivered the next day to Mr Bhatt’s hotel and Mr Bhatt said he would text the address.

Not having heard from Mr Bhatt, he himself texted asking for the hotel name “as I was worried I would be occupied later.”

Mr Bhatt had then called him with an alternative arrangement for the tickets to be left at the ground under the name of “Johnny.” “I arranged this and sent a text message confirming the same.”

5 September 2009 – Durham match. They arrived at the ground at around 9 am for a short 30 minute practice session. The team was then announced followed by a warm up session of about 20 minutes. Following the game they left Durham, he thought, at about 6 pm arriving back at the Essex County ground “late on Saturday night.” He went home to change and received a text from Mr Westfield after which he agreed to go to a local bar/eatery.

7 September 2009 - Journey to Somerset.

Initially, he sat at the front of the bus with Grant Flower. At some point in the journey, he went to the toilet at the back of the bus. A group of players, including Mark Pettini and David Masters were playing cards and James Foster was nearby.

The group was loud and jovial with a light-hearted dispute about the game. “The conversation moved on to match fixing” and he was asked about it because he was a Pakistani and “some players in the sub-continent were previously caught up in some

mess". James Foster asked some questions but the "conversation was jovial and there was a lot of banter which was not directly in relation to match fixing."

In April 2010, whilst in Karachi he had, through the media, become aware of allegations. He was shocked but Essex were happy for him to return for the 2010 season "which was already under way." He returned to UK at the beginning of May 2010 eager to clear his name and was interviewed by, and co-operated fully with, the Essex police.

"Around the time of the interview (Note - 14 May 2010), I remember there was a team meeting called by the players where there was a frank discussion in the changing rooms about what had happened. There was no mention from Mervyn that I was involved or that I had corrupted him in any way and I recall there was a slight altercation between Mervyn and Tony Palladino."

"Mark Pettini and David Masters have always held some animosity towards me, which I think comes from the fact that I commanded a high salary...."

In a cricketing career of 20 years, he had never thought about going down the wrong path and "recently as a more senior player I have always advised the younger players to perform to the best of their abilities and never let their team mates down..."

"I have never in my career been involved in any kind of match fixing or spot fixing and I would never do so in the future. No one, to date, has ever approached me for match/spot fixing; equally never have I approached anyone in this regard. This is something I wholly detest."

"I have never discussed or pressured Mervyn, directly or indirectly into taking part in any type of fixing."

A thorough Police investigation in 2010, which included forensic experts, found no unusual or irregular activities in his personal or financial affairs.

None of the telephone contact between him and Mr Bhatt had to do with spot fixing or any other form of cheating in relation to cricket and/or gambling.

Cross examined by Mr Mill:

He had thanked Mr Peacock "for the warning". He then considered Mr Bhatt to be a very dangerous person, linked to the Mafia, that sort of thing. "These people are like dogs, when you keep with them they are fine, when you try to get away from them, they will bite you." He was scared of avoiding him lest there be repercussions for his family. He thought it sufficient to act within the ICC Guidelines in particular to meet only in public places and to report any illicit approaches. There had been no such approaches and in 2009, met him only once – in Dukes night club. There had been no official warning – he would have welcomed such a warning as it would have provided an excuse to avoid meeting.

Contacts with AB

The first contact with Mr Bhatt came in mid-August 2009 when he received a call to say that he was in the UK, would be in the Essex area at some stage and would meet up. He had felt scared, replied OK but had not saved the incoming number.

Although he said that the next contact was on 30 August and denied any intervening contact his attention was drawn to phone records of 29 August, which showed contact between them on that day.

29 August 2009.

There had been a number of missed calls. He returned the calls, found it was Mr Bhatt and was again told that he was in UK and if in the Essex area at some stage then he would meet up. He had made 2 separate calls because the line had dropped off. Originally he had thought that he might have been in the gym or somewhere in the car but was reminded that the calls were at the time of the lunch interval of the 4th day of the Essex v Leicestershire County Championship game at Chelmsford.

30 August 2009

(Note: There were no recorded phone contacts that day between Mr Kaneria and Mr Westfield nor any calls made by Mr Kaneria to Mr Bhatt. Mr Kaneria called Varun Chopra at 13.24 [4 seconds])

Mr Kaneria claimed that the "Dukes day" events had taken place on 30 August when "my friend, and Mervyn Westfield and my cousin Faran were at my house." He had a call from Mr Bhatt saying that he was in the Essex area and wanted to meet. He had saved Mr Bhatt's number on 30 August because he, Bhatt, had been trying to ring him "again and again" and he wanted to know which person was calling him "again and again". He was scared of him and hadn't wanted him to know where he was living and therefore told him he would be at Dukes and Bhatt said he would meet him there. Bearing in mind the ICC Guidelines he considered it acceptable to meet in a public place and thought that they would just meet and then Mr Bhatt would go away.

He had in mind that Mr Westfield was a young, upcoming cricketer and knowing that Mr Bhatt was a very dangerous man did not want to tell Mr Westfield about him because if he told him that he was an illegal bookie and a very dangerous man, they might have some discussion and Mr Westfield might get in some trouble.

Mr Bhatt was there only for 5 or 10 minutes, asked after his family and left having said he would like to see a couple of Essex games and asked if he could get some complimentary tickets.

He said that as a VIP pass holder he frequently went to Dukes, sometimes with Mr Westfield.

Questioned by Mr Mill about there being no recorded phone calls to or from Mr Westfield on either 29 or 30 August despite his claims that there had been a number of calls between them leading up to Mr Westfield coming to his home, Mr Kaneria said that he remembered that he had rung Mr Westfield using his landline. His mobile phone "was maybe out of battery" and on charge. He had a recollection that he had the cordless land phone in his hand, took out his number from the mobile, dialled it from the handset of his landline and sat down to talk to Mr Westfield. Despite the lack of records of calls, he said that Mr Westfield had, in fact, called him "I'm not saying the phone records are wrong. I'm saying he called me", "he must have rung me another number something" "or with another number, his own number but he rang me, which I have stated in my statement."

The call which he claimed to have made just before reaching Mr Westfield's house - "I didn't use the landline because I'm in the car. I gave him a call just before reaching his house."

He thought that they had got to the night club at something like 11 to 12.

31 August 2009 (bank holiday Monday)

(Note: There were no records of any phone contacts between Mr Kaneria and Mr Bhatt.)

He denied that the lack of recorded contact between him and Mr Bhatt on 31 August or from him to Bhatt was indicative that Mr Bhatt was already at his home – “he was not at my house at all” - it was total lies that Mr Westfield met Mr Bhatt there. It was total lies that he told Mr Westfield that Mr Bhatt was “in oil” “I have not told Mervyn about Anu at any time, any stage at all.” All that Mr Westfield had said about his involvement was lies.

Re-examined by Mr Moloney he confirmed that texts between him and Mr Westfield between 18.30 and 18.49 related to their possibly meeting to play golf. There had been further texts and telephone calls between them from 20.01 to 20.49 including a 1 minute 28 seconds call and three texts around 11 pm and two at 1.56 and 1.57 respectively.

V. Chopra. – 31 August 2009.

Mr Kaneria was asked about the conversation mentioned by Mr Chopra as having taken place on the Bank Holiday weekend. It was suggested that such a call was unlikely to have been 29 August as Chopra, a young player, was playing with him in the Leicestershire game.

He had tried to contact Mr Chopra once on 30 August and the phone records for 31 August showed calls and texts from him to Chopra between 19.57 and 20.19. There were two calls at 19.57 (1 minute 20 seconds) and 20.08 (54 seconds) interposed with a text to him at 20.14 followed by a further call at 20.19 (31 seconds).

He denied any suggestion that he had spoken with him about ways of making money, as Chopra claimed. The conversation had related solely to queries by Mr Chopra about incidents in an International match which he, Chopra, was then watching on TV.

It was pointed out, by Mr Mill, that these calls were interspersed with calls to Mr Westfield but Mr Kaneria said that he had rung Mr Chopra only as a friend asking things like “How’s everything? How’s things?”

1 September 2009

He had called Mr Bhatt at 14.37 for a 36 second call. There had been a number of missed calls and he returned the call to avoid Mr Bhatt becoming suspicious from non-contact. Mr Kaneria claimed to be able to remember all of the conversation he had with him. On that occasion he was in the shower or maybe relaxing in the bath tub because they hadn’t trained that day. The conversation, after formal greetings, was limited to “it was very nice meeting you that night”.

He had no other conversation with him about tickets until 3 September - “The Hampshire game.....I had a conversation about the tickets.” – on the day of the game.

Re-examined by Mr Moloney he confirmed that the group of evening texts showed clearly that they related to arrangements for giving a lift to Mr Westfield.

2 September 2009.

At 11.37 he had called Mr Bhatt (84 seconds). There had been a missed call and when he returned the call he told him he was at practice, training, was busy – that was all. A voice mail call (2 seconds) had come from Mr Bhatt at 12.25 and he called him back with a 15 sec call at 13.14. There was a return call of 48 seconds from Mr Bhatt at 13.16. At 13.14 he had told him he was busy with the Physio and when Mr Bhatt called him back 2 minutes later the conversation was solely on the same lines of being busy in the training session and with the Physio – nothing else. He had not rung him back later because he had to do training, go to the gym and needed to relax himself for the game the next day. After the training had finished he had himself to do his own core fitness work. He needed to relax his mind and did not return the call.

Mr Mill pointed out that before the Disciplinary Panel he had said that it was on 2 September that Mr Bhatt “was just saying it was nice to see you at the Dukes that day, in the night, that’s all. Just like that. Nothing else” – whereas he was now saying that this conversation took place on 1 September (see above). Mr Kaneria replied that when on 2 September, he said he was busy with the Physio Mr Bhatt had again said “OK. It was nice to see you at Dukes”

3 September 2009

(Note: The Hampshire game began at 16.40 and Hampshire batted first.)

He called Mr Bhatt at 13.46 (183 seconds) following missed calls – somewhere about the time he would be leaving home for the ground. After formal greetings he told him he was at the ground because they had a game that day and Mr Bhatt asked if there was a possibility that he could have some tickets. He made three further calls to Mr Bhatt between 15.22 and 16.15 lasting 109, 210 and 18 seconds respectively. The first was to explain that he couldn’t get tickets for him, the 2nd followed a dropped call was when he suggested that Mr Bhatt should instead go to the large famous Gujarati Temple at Neasden which attracted followers from all over the world. He gave him route directions. The 18 seconds call again followed a missed call but he was unable to speak properly on a poor line from the dressing room. He had not rung him back because he was too busy with the match.

There had been two further 3 second missed calls each at 19.33 during the interval and he returned the calls at 19.37 for 90 seconds. He had merely said that he was in

the match and too busy to talk. He denied that they had discussed Mr Westfield's performance.

He received three further calls after the game – at 22.18 (30 seconds), 22.20 (20 seconds) and 22.42 (2 seconds) They were only to say that Mr Bhatt had enjoyed the Neasden Temple and to ask "how was the match?" There had been no discussion about Mr Westfield nor anything said about wanting to see another game.

4 September 2009

That day they travelled to Durham.

He received two brief calls at 14.39 and 14.41 before returning the calls at 14.50 in a call lasting 256 seconds. Mr Bhatt said he was "up North" and asked for a couple of tickets for the match. He had said "OK". "That was all. That was all the conversation I had with him in this 14.50". He had been surprised that Mr Bhatt was then up North.

At 15.07 Mr Bhatt rang him again – 179 seconds. This was a call discussing whether tickets would be available. "I told him that the tickets will only be possible in the morning before the game. That's all the conversation I had with him." "The line was also not good at that time. I can remember."

That evening Mr Bhatt called him again – a missed call at 17.27 and a 21 seconds call at 18.49. He had originally been in the hotel pool area, the call from Mr Bhatt had dropped so he returned the call at 18.51 (28 seconds) followed by a text at 18.55. Mr Bhatt was enquiring whether the tickets would be available, he had replied that he was not sure but asked for the name of his hotel so that he could get the tickets to him. Mr Bhatt had said he was not then sure which hotel so, tired because of the journey and his training in the pool, he sent a text asking for the name and postcode of the hotel. The intention was the following morning, if tickets were available, to send them by taxi or courier. He hadn't wanted to leave the tickets at the gate because he had not wanted to meet him at all.

He denied that a call to Mr Westfield at 19.32 was to say that he was ready to leave for Mr Bhatt's hotel. There had been a missed call from Mr Westfield whilst he was in the pool and Westfield had told him it had been to see if they were "going to eat or something" – this had been OK to him.

Later in his evidence, Mr Kaneria said that he did not go out of the team hotel at all that night, having got food at the coach stopover en route and that he had eaten in his room.

5 September 2009

(Note: The times of the Durham game were approximately 12.45 pm to 18.25 pm with an interval from 15.25 to 15.45).

10.29 telephone from Mr Bhatt – this 6 seconds call had been to tell him to "Leave tickets by Johnny name." He was not sure whether by that time they would have been on the team coach for the ground but at 11.12 he confirmed the arrangement by text.

During the match there were two contacts – a call from him to Mr Bhatt at 15.57 (18 seconds) and a voicemail attempt in reply for 5 seconds with no message at all. His own call was because there had been an earlier missed call and he contacted Mr Bhatt just to say that he was busy with his Physio.

After the match, there were further calls from Mr Bhatt - 112 seconds at 19.15 followed by two further brief attempts and a 90 second call at 19.38. The first call, received in the dressing room was to congratulate him on victory and to thank him for the tickets – no more. The second was an enquiry by Mr Bhatt as to whether he was staying in Durham for the night and suggesting they meet up and have food together. He was not sure whether at that stage he told him he was busy packing or was in the coach but he told him they were going home.

At 21.25 there was a further call to Mr Bhatt (38 seconds) followed by a return call almost an hour later at 22.31 (46 seconds). There had been missed calls because he was tired on the coach, had his music system on his headphone and was lying down sleeping. He was asked by Mr Bhatt whether he knew where he could get Gujarati food in Durham – he promised to find out and let him know. Because he was anxious to keep Mr Bhatt at a distance he did not get back to him but Mr Bhatt had rung again with the same request but he told him that he couldn't find anything.

(Early hours 6 September 2009)

At 00.11 he had called Mr Bhatt (149 seconds) followed by a return call at 00.30 (20 seconds). There had again been a number of missed calls on the coach. The call was to say that Mr Bhatt had found a restaurant where he had eaten nice Gujarati food. The line had dropped and Mr Bhatt returned the call 20 minutes later.

At 01.13 he received an 11 second call from Mr Westfield. He had not asked him if he wanted a lift home at the end of the long journey as it was up to him to ask and other boys gave him lifts. Mr Westfield was probably ringing from his home. He, Mr Kaneria, had gone home to get changed. Mr Westfield rang to ask if he were feeling alright and to suggest going out for a bit into town - "an eatery or something." Although he had not given Mr Westfield a lift home, he had been contacted by him and agreed to go out because, although tired, cricketers needed to relax, relax the mind and have fresh air.

6 September 2009

He himself called Mr Bhatt at 12.45 (33 seconds) followed by two return calls at 13.18 (19 seconds) and 13.27 (29 seconds).

There had been an earlier missed call from Mr Bhatt which he returned. He had told him he was very busy and would call him later. He was busy with many things such as house cleaning or with his cricket stuff. When Mr Bhatt called twice, Mr Kaneria had said the same about being busy as Mr Bhatt had said he was just ringing for a chitchat. He had not bothered to ask Mr Bhatt where he then was as "I was keeping him at a distance as well and not answering every call and I was scared of him."

7 September 2009

At 14.29 (14 seconds) Mr Bhatt called. Mr Kaneria was in the middle of religious work and said he would call back which he did at 16.06 (120 seconds). During this call Mr Bhatt had said it was nothing much except that he was nearby and might be going soon. He said he was in a Gujarati restaurant, coming down from up North, near Birmingham. He had just called for a chitchat or something. Mr Kaneria did not know exactly what was said as he was busy. The line was not good and after having other calls he called Mr Bhatt again at 16.51 (16 seconds). This time Mr Bhatt said he was going back to India and he had replied "Right mate. Take care. Have a safe journey. Give salaam to..."

Coach Journey.

He did not suggest that the players were lying – there had been talk but it was always jovial, banter and they raised the question of Pakistani players and wanted information from him. He denied saying the words suggested by Mark Pettini or that he knew people involved. He did not know that there was a co-incidence in Mr Bhatt being in the country – his last contact with him was on 7 September.

ii. Statemented Evidence

Dharmeta Kaneria spoke of a first meeting with Mr Bhatt and his wife when she and her husband attended, with other Pakistan players, a dinner at Mr Bhatt's home during Pakistan's tour of India in 2007. It was common for players to be feted in this way and they were frequently given gifts and substantial discounts by shop owners and fans. She had struck up a friendship with Mrs Bhatt who had once assisted her with local shopping and had attended at the Airport to see them off.

Vikrant Kaneria spoke of their respected family background, the moral standards taught to them and Mr Kaneria's role as a committed, dedicated and responsible family man. He described him as being of a submissive nature, who had never been involved in any disciplinary matter either socially or professionally, being a man loved by all family and friends.

Faran Kaneria

Faran Kaneria spoke of a visit to Mr Kaneria in Chelmsford on August Bank Holiday weekend 2009. He had regularly visited him and stayed at his home whenever there was a long weekend, bank holidays. He arrived on the Sunday 30 August having worked on Saturday. He had been to Dukes night club in Chelmsford on various occasions, usually alone, with Mr Kaneria. He had met Mr Westfield once previously at a post-match celebration party in London hotel.

On the day of his arrival, Mr Kaneria had spoken to Mr Westfield about coming into town with them and he returned with him in the evening having bought some groceries. Following the eating of a take-away meal with Mr Westfield at Mr Kaneria's home, the three visited Duke's night club. In a crowded Club, they were approached by an Asian male and white female. Mr Westfield spoke at length to the female and later left the group and was not seen again that evening. The couple also left them and in the early hours of the morning, he and Mr Kaneria left by a mini cab driven by a driver known to him. He was unable to give any specifics about the Asian man because it was too dark in the night club.

Mohammed Afzaal Nasir, a taxi driver and an avid Pakistani cricket fan, indicated that he picked up and dropped off Mr Kaneria many times in Chelmsford. He remembered one night, in particular, as being the only occasion when Mr Kaneria had been with a man who was introduced to him as a cousin. He remembered that it was Bank Holiday weekend in August 2009 and he was told that the cousin was visiting for the weekend. He did not recollect any other person being in the car. It was right after the V Festival in Chelmsford and the following day was the Bank holiday. It was 30 August and the next day was his day off.

Paul Grayson spoke highly of Mr Kaneria in terms of his abilities, enthusiasm and relationship with other players. He described him as approachable, enjoying a good banter with the rest of the team, having a wonderful rapport with some of the players with whom he often socialised off the field. During his time at Essex, he had never been reprimanded nor disciplined for any sort of disruptive behaviour. He himself

had “heard of match fixing banter between some of the players however I understand it to be just that, banter.”

Tom Westley, a top order batsman, stated that whilst on the Essex staff he stayed overnight at Mr Kaneria’s house on about 5 occasions and at no time, whilst staying at his home, was he ever introduced “to any friends of his who seemed of an unsavoury nature.” Mr Kaneria always treated him well and, on occasions, would pay for his meal. He said that whilst there was always banter in the dressing room, he never heard any banter centring around match or spot fixing nor had he ever been approached by Mr Kaneria or any other person in relation to match or spot fixing.

12. Judgment and Findings:

The Panel considered the evidence with care and, in the proceedings, had the benefit of seeing the video of the relevant Westfield over.

It has considered the written and oral submissions of both sides.

In assessing the evidence, it has been very aware of the period encompassed by the evidence. It is over 3 ½ years since the “vital period” from mid-August/early September 2009 and there were substantial time gaps between various episodes including those between that “vital period”, the first formal investigation in March 2010 and the proceedings in 2012. The oral witnesses before the Panel were cross examined, sometimes in detail, about discrepancies between statements given in 2010, some 6 months after the “vital period”, those made in 2012, the oral evidence given before the Disciplinary Panel in June and that given before the Panel. Both Mr Westfield and Mr Kaneria, in particular, were so questioned and in assessing whether discrepancies affect credibility, the Panel took fully into account both the difficulties of honest recollection and the effect on credibility of claimed abilities to recollect precise detail of past events.

The Panel, whilst considering individual aspects of the evidence, was concerned to assess the evidence as a whole, including an assessment of the motivations and mind-sets of witnesses as events unfolded as opposed to any hindsight views to which they might have been drawn.

As in most cases, oral evidence is of considerable importance – the Panel has heard from Mr Westfield, Mr Kaneria, Antonio Palladino and Alan Peacock.

So far as Mr Kaneria and Mr Westfield are concerned their evidence on vital issues and events is diametrically at odds and it is clear that, on such matters, one or other is lying. It was, therefore, vital to consider whether other evidence assisted in resolving this dilemma.

Mervyn Westfield.

In relation to his evidence the Panel bore fully in mind the need to examine his evidence with great care – he has admitted his criminality, and at various stages might have had reasons to implicate others and still may have reason to minimise his own responsibility or involvement although it was not put to him why he would want to implicate Mr Kaneria in particular. The Panel was at pains to consider whether there was other reliable evidence to support his evidence on core events.

The Disciplinary Panel described him as being, in September 2009 “vulnerable and naïve, relatively unworldly and unsophisticated.”

With the benefit of evidence which was not available to the Disciplinary Panel and of evidence as to events which have occurred subsequent to the beginning of the Appeal proceedings, the Panel has come to a different view.

Although he had suggested, in answer to cross examination, that he might have been disturbed when underperforming and would have sought to distance himself from Mr Kaneria, the Panel is satisfied that, having agreed to underperform, he did so willingly and continued to socialise and remained friends with Mr Kaneria until they parted at the end of the season. The Panel is satisfied that those concerned in the plot had no reason to think they had been unsuccessful and it was not until the start of the following season that the plot unravelled.

There is no doubt that, from March 2010 to his imprisonment in February 2012, faced with accusations Mr Westfield lied consistently in attempts initially to avoid conviction and, thereafter, to minimise the consequences. In the current proceedings, he provided specious excuses for failing to co-operate, blamed others for his predicament and blatantly lied to the Panel as to the preparation of a media statement to be issued at the end of his evidence.

The Panel is able to accept the description given by Mr Palladino of Mr Westfield being insecure and easily influenced but it also found him to be streetwise and devious.

The Panel has, therefore, been required to examine with great care whether his core evidence, since he made his first statement in these proceedings, has been consistent and whether it is satisfactorily corroborated by other evidence.

Mr Kaneria

In considering his evidence, the Panel has reminded itself that he is a man of good character. He has never faced similar charges and his character witnesses speak of him in glowing terms. He is entitled to, and has been given, full credit for this character both in the sense of support of his credibility as he gave evidence and the fact that such character might mean that he was less likely to become involved in these matters at all.

That having been said, we found much of his evidence to be completely unreliable, his claims to remember precise details of past events, whilst evading close questioning on others, were preposterous and, in particular, many of his explanations for unchallenged telephone records and for his failure to warn off Mr Westfield from Mr Bhatt were ludicrous. He was a thoroughly devious and dishonest witness.

He claims to have been frightened of Mr Bhatt and to have attempted to keep him at arm's length and, having been warned off by Alan Peacock, to have complied with the requirements of the anti- corruption Guidelines. The Panel finds that the telephone records overwhelmingly refute this and his evidence that there were many missed calls (some of which do not appear in the unchallenged records) to which he felt constrained to reply was wholly unconvincing. He was in regular communication with Mr Bhatt sometimes in calls lasting a significant time inconsistent with the explanations given by him. Although Mr Kaneria did say that he was scared of Mr Bhatt, he did not provide any convincing explanation as to why this was. Nor did he say that he felt intimidated or threatened by Mr Bhatt. Indeed, he continued to refer to Mr Bhatt as a "friend" at a point when the police became involved and did refer to him as "Anu" during the appeal hearing itself.

He was well aware that Mr Westfield was a vulnerable and impressionable young player. He socialised extensively with him and the Panel is satisfied that he identified him for the purposes of corruption by Mr Bhatt and his associate. We are further satisfied that he was directly involved in the persuasion of Mr Westfield to be involved and in discussions in which the precise requirements were explained.

Further Evidence

It was suggested that Mr Westfield first sought to involve Mr Kaneria when the Police became involved and subsequently, further incriminated him as part of the processes of guilt denial and minimisation of responsibility. The Panel is satisfied this is incorrect. Although, with the passage of time, there may have been some discrepancies in the details of his evidence and in the evidence of Mr Palladino and Mr Wright, the Panel finds that Mr Westfield, very shortly after the Durham match, having socialised and had drinks with Mr Palladino, disclosed the money to him and specifically said that Mr Kaneria had been involved. There was, at that time, no reason for him to lie about Mr Kaneria with whom the records show, he continued to associate until late in the season.

The evidence of Mr Palladino is, of course, hearsay, as is to an even greater extent, that of Mr Wright to whom Mr Palladino disclosed what he knew, but the overall effect of that evidence is to satisfy the Panel that Mr Kaneria's name had been put forward at that very early stage, long before the matter became general knowledge and the Police involved.

The evidence of the other Essex players called by the ECB was by way of their original statements amplified in the transcripts of their 2012 evidence. This evidence does not directly relate to the charges against Mr Kaneria but is to be considered in a time context and the light it might throw on Mr Kaneria's activities at the relevant time.

There is no suggestion that any of the witnesses is being untruthful but Mr Kaneria's case is that they are mistaken in some respects, that their memories have been affected by hindsight and that in, any event, they did not take what Mr Kaneria had been saying seriously.

It should be borne in mind that their evidence relates to the precise period when Mr Bhatt was in UK and at the time when Mr Westfield was being approached and involved in corruption.

The Panel is satisfied that the clear picture emerges of Mr Kaneria generally "testing the temperature" by implying that much more substantial moneys could be obtained than the limited prize money then available, that he instigated the conversations under cover of joviality and that so far as Mr Chopra, another young player, was concerned there was a specific approach made.

This is all substantial evidence when assessing the conflicting evidence of Mr Westfield and Mr Kaneria as to Mr Kaneria's involvement.

Key Dates/Events.

30/31 August – the Dukes Day.

The telephone records do not support Mr Kaneria's assertion, as supported by his cousin that he had spoken to Mr Westfield on 30 August and brought him to the house that evening.

In so far as the date itself is significant, the Panel is satisfied that the calls the following day show substantial communications between Mr Kaneria and Mr Westfield at times consistent with arrangements to meet for an evening meal before, following the meal at Mr Kaneria's house, leaving for the night club in the late evening. There are unexplained texts for times in the late evening and the early hours of the morning but the Panel considers them neutral in terms of supporting or refuting their joint presence at Dukes.

It is inconceivable that a corrupt plan of this complexity could be quickly set up on the basis of an initial brief introduction. There was no evidence of any direct contact between Mr Westfield and Mr Bhatt and there were regular communications between Mr Bhatt and Mr Kaneria. The Panel accepts Mr Westfield's evidence that Bhatt and another Asian man were involved. For the scheme to be effected there had to have been a conduit between Mr Westfield and the two men and the Panel finds that Mr Kaneria was that conduit and that the initial meeting proceeded on the lines outlined by Mr Westfield.

It is also of significance that, on the 31 August, Mr Kaneria was in frequent contact with Varun Chopra. The timing and frequency of the calls is entirely consistent with efforts to involve him at the same time as Mr Westfield and Mr Kaneria's explanations as to the conversations are not only unlikely but are negated by the lack of International cricket matches on TV on that date. The Panel is satisfied that he approached Mr Chopra as evidenced by the player, although in the guise of being jocular as he did so.

The Panel does not find it necessary to decide whether any event of the kind suggested by Faran Kaneria took place. His own account is that he had regularly accompanied Mr Kaneria to Dukes on his frequent visits. His initial statement, claiming to recall precise detail, was dated over 2 ½ years after the event. There may well have been a similar visit on another occasion.

2 September 2009 – Training Ground.

The Panel rejects entirely Mr Kaneria's explanations for the morning and lunch time calls involving Mr Bhatt. The timing and length of the calls are consistent with arrangements for setting up the meeting between the Asian man and Mr Westfield after training the day before the Hampshire match.

3 September 2009 – Hampshire game.

The lengthy and frequent calls from Mr Kaneria to Mr Bhatt during the afternoon before the game and during the interval are consistent with continued plotting and a report on Mr Westfield's performance in the Hampshire innings. After the game, in which Mr Westfield had performed well, further calls followed. The explanations given by Mr Kaneria, including that a failure to get complimentary tickets resulting in a decision by Mr Bhatt to visit a London Temple are ludicrous.

4 September 2009

The frequent calls and texts between Mr Kaneria and Mr Bhatt over a period of over four hours are consistent with further planning for the Durham game. The explanations for Mr Bhatt being by chance in the area, for the contents of the calls and the request for hotel name and postcode are highly implausible. The Panel is satisfied that arrangements had been made for Mr Westfield to be brought to Mr Bhatt's hotel, that enquiry was made as to its whereabouts and the call from Mr Kaneria to Mr Westfield at 19.32 was probably to arrange to leave. It is satisfied that

the meeting took place as Mr Westfield claimed and, specifically, that Mr Kaneria was fully involved.

5 September 2009.

Mr Kaneria's explanations for the calls from the morning of the match to their arriving back in Chelmsford in the early hours of the morning are also ludicrous. The Panel has no doubt that arrangements were being checked before the game and the discussions afterwards, far from discussing the Gujarati eating places in Durham, were for meeting back in Chelmsford to make payment. In particular, the Panel was unimpressed by Mr Kaneria's assertions that after a long coach trip back, he had not offered Mr Westfield his usual lift but then Mr Westfield had called him at 01.13 to suggest going out. The Panel is satisfied that Mr Westfield and the men were in the car together, the money was paid and that there was a brief call of acknowledgment by Mr Westfield.

The clear and overwhelming picture which emerges is that within a short time of Mr Kaneria returning to Essex from overseas, he resumed contact with Mr Bhatt, a man known to him to have been deeply involved in cricket corruption. He approached young players and other team members to assess their vulnerability to match/ spot fixing arrangements and made direct suggestions to two young players. A corrupt arrangement was made involving Mr Bhatt and resulted in payment to Mr Westfield.

Despite the clear concerns as to Mr Westfield's veracity and behaviour in aspects of the case, the Panel is satisfied that since these proceedings began in 2012, his evidence on the essential core issues has basically remained consistent, that the total evidence on these core issues is compelling and the Panel finds itself sure that the ECB has proved its case.

13. Conclusions.

The Appeal Panel concludes and finds as fact, that the ECB has proved to the agreed standard of proof that in late August/ early September 2009 that:

- a. Danish Kaneria knew the activity in which Anu Bhatt was engaged;
- b. Mr Kaneria acted as a recruiter of spot fixers for Anu Bhatt;
- c. That Mr Kaneria approached a number of what he saw as potential targets at Essex with a view to recruiting them;
- d. Mr Kaneria introduced Bhatt to Mervyn Westfield with the intention that Mr Westfield should be recruited into spot fixing;
- e. Thereafter, Mr Kaneria induced and encouraged and/or attempted to induce or encourage Mr Westfield into becoming involved, well knowing that he was young and vulnerable, and into not performing on his merits by deliberately conceding a minimum number of runs in his first over of the match between Durham and Essex ;
- f. Mr Kaneria was present at the meeting in Durham with Mr Westfield and the two Asian men – one of whom was Anu Bhatt
- g. Mr Kaneria was present when Mr Westfield was paid out by the Asian men.

We, further, specifically record our finding that Mr Kaneria was fully aware of and encouraged the details of the arrangements put to Mr Westfield. Such conduct is quite obviously such that the game of cricket is brought into very serious disrepute.

The charges are, therefore, proved and the Appeals dismissed.

The issues of sentence and costs will be dealt with at a separate hearing.

Edward Slinger (Chairman)
Ricky Needham
Cliff Pocock
Tim O'Gorman
Mike Smith.

May 2013.