

**INTERNATIONAL CRICKET COUNCIL**

**INDEPENDENT ANTI-DOPING TRIBUNAL**

**DECISION IN THE CASE OF MS TREMAYNE SMARTT**

**Tim Kerr QC, Chairman**

**Dr Anik Sax**

**Professor Peter Sever**

**Introduction**

1. This is the decision of the independent Anti-Doping Tribunal (“the Tribunal”) appointed under Article 8.1.3 of the International Cricket Council (“ICC”) Anti-Doping Code (“the ICC Code”) by the President of the ICC’s Anti-Doping Panel in conjunction with the ICC’s Anti-Doping Manager to determine a charge brought against Ms Tremayne Smartt (“the player”). An oral hearing in respect of the charge took place by video link in London and Trinidad on 18 November 2011.
2. The player was represented by Mr Sanjeev Datadin of Whitworth Chambers, Legal Practitioners in Georgetown, Guyana. The ICC was represented by Mr Iain Higgins, Company Lawyer, of the ICC in Dubai, assisted by Ms Lorinda Rugless, the ICC’s Anti-Doping Manager. The Tribunal is grateful to the representatives of both parties for their clear and helpful written and oral submissions.
3. The player was charged with a doping offence following an adverse analytical finding in respect of a urine sample no. 2561856 provided on 11 September 2011 after the Twenty20 international West Indies v. Pakistan match held at

Providence Stadium, Georgetown, Guyana. The player's A sample tested positive for furosemide, which appears on the 2011 WADA Prohibited List under class S.5 (diuretics and other masking agents). Substances in this category are prohibited at all times, both in and out of competition.

4. By Article 18.2, the ICC Code must be interpreted as an independent and autonomous text and not by reference to existing law or statutes of any of the organisations which are signatories to the World Anti-Doping Code ("the WADA Code"), or of any government. By Article 18.4 the ICC Code shall be interpreted consistently with the WADA Code, and annotations to it may be used as an aid to interpretation. By Article 18.6 of the ICC Code, it is governed by and to be construed in accordance with English law, subject to Article 18.2.
5. The player accepted that her sample contained a prohibited substance and therefore that she had committed a doping offence. She submitted that the substance entered her body by oral ingestion of a tablet and was not intended to enhance her performance. She accepted that her results and performance statistics from the West Indies v. Pakistan match on 11 September 2011 must be disqualified, but submitted that the degree of her fault was small and invited the Tribunal to impose a period of ineligibility of short duration.
6. The ICC did not advance a positive case contrary to the player's. However, the ICC rigorously tested the quality of the evidence given on the player's behalf at the hearing; adduced evidence from witnesses to prove other relevant facts in the history; and indicated that, assuming the Tribunal accepted that the banned substance entered the player's body by oral ingestion of a tablet and was not intended to enhance her performance, it would leave to the Tribunal the question how long a period of ineligibility should be imposed.

### **The Facts**

7. The player was born on 17 September 1985 and is therefore now aged 26. She is a citizen of Guyana and a talented cricketer who has played for Guyana and

the West Indies. She is the fourth of ten children. Her father is a cane harvester and her mother is a housewife. The family has lived in various villages along the Corentyne coast of Guyana, according to where her father could find work. The player is educated to secondary school level and has been a passionate cricket player since childhood. She is now also a qualified cricket coach. Her first language is English, which she reads and speaks fluently. She is computer literate and communicates by email.

8. In about 2004 the player fell from a bicycle and suffered an injury to her left knee. From about mid-2008 she began to experience pain in her left knee following a twist injury while bowling. She consulted a local doctor in general practice, Dr Singh, who referred her to a consultant orthopaedic surgeon in Georgetown, Dr Sony. He arranged for a Magnetic Resonance Imaging (MRI) scan of the player's left knee. This first MRI scan was performed on 9 September 2009.
9. The diagnostic imaging report recorded that the player could bend her left knee but sometimes experienced difficulty when walking. The scan revealed small early osteophytes, mild lateral displacement of the patella due to joint fluid and some other abnormalities. On 11 September 2009 Dr Sony performed an arthroscopy of the left knee, discovered a tear in the meniscus, and did a partial meniscectomy.
10. Over the following two months the player's left knee was aspirated on two occasions by Dr Sony, using a syringe to remove fluid, because of gross effusion. Unfortunately the player continued to suffer pain after the operation, and further surgery was considered, on Dr Sony's recommendation, but would have been expensive and beyond the player's limited means.
11. In early October 2009 the player joined the West Indies team training camp in Barbados to prepare for a tour of South Africa. The team physiotherapist was Dr Jacqueline King, a respected private practitioner of sports medicine who

provides services to athletes and cricketers under contract with their governing bodies. She is experienced in doping control matters and aware of the World Anti-Doping Agency (“WADA”) prohibited list. The player also plays cricket for Guyana, but that team does not have a physiotherapist.

12. Dr King first met the player at the training camp and provided anti-inflammatory medication for the pain in her left knee. She arranged for the player to see Dr Jerry Thorne, a consultant orthopaedic surgeon in Barbados, so that he could advise whether she was fit enough to go on the tour of South Africa. She saw Dr Thorne on 8 October 2009. He advised that she would be able to take part in the tour and play. She therefore went to South Africa with the team.
13. Dr Thorne noted in his report of 22 October 2009 “degenerative changes in the medial compartment”; and that the player:

“has an ACL [anterior cruciate ligament] deficient left knee, for which she has compensated with good dynamic support provided by her quadriceps and hamstrings, what has occurred recently is the her [sic] physical demands has increased and surpassed the tolerance of the knee and consequently that ACL deficiency has become clinically evident with swelling about the left knee”.
14. He concluded that this was insufficient to prevent her going on the tour; that she should be given ice packs for the swelling and anti-inflammatory medication for the pain; and that surgical reconstruction would only be indicated in the event of some “mechanical dysfunction”.
15. The player was not selected for the first three one day internationals on the tour, but played in the fourth one day international on 23 October and in the remaining three T20 matches from 25-28 October 2009. Dr King was also on the tour and managed the player’s left knee in accordance with Dr Thorne’s advice and providing physiotherapy treatment and rehabilitation exercises.

16. On the team's return to the West Indies, a "mini-series" of five matches against England was played during November 2009 in St Kitts. Dr King continued to provide physiotherapy and rehabilitation exercises for the player who continued to be fit enough to play, and played in two of the five matches, on 5 and 12 November.
17. Dr King followed her usual practice of providing written injury reports on players to Mr Tony Howard, the Director of Cricket Operations at the West Indies Cricket Board ("WICB"), who in turn ensures that these reports are passed on to the member associations. Dr King provided such a report for the player, though she mistakenly referred to the problem as being in the player's right knee rather than her left knee.
18. In her brief report, Dr King noted under the heading "Management Plan" that the knee "[n]eeds further investigation i.e. MRI". In December 2009 or January 2010 Dr King spoke about the player's injury to Mr Reon King, the Cricket Development Officer at the Guyana Cricket Board which is the player's home association. It was at this time, on 1 January 2010, that the ICC Code entered into force, incorporating the anti-doping regime set out in the WADA Code.
19. Mr King had a copy of Dr King's injury report and was aware of the recommendation that a further MRI scan should be carried out. He advised the player to see Dr Jeffrey, and after some delay the player was able to see him in Georgetown. The scan was carried out on 18 January 2010. The finding was that there were indeed osteoarthritic changes in the knee joint. The report was provided on or about 20 January 2010 to Dr King and Mr Howard. Dr King also showed it to Dr Thorne, who advised that further surgery was not needed and that physiotherapy and rehabilitation exercises should continue.
20. Both Dr King and the player have some recollection of a telephone conversation between them in or about January or February 2010, during which the player's knee and the MRI scan were discussed. Neither can recall the

details of the conversation. It is likely that Dr King mentioned to the player the advice not to undergo further surgery. The two also met at Albion Cricket Ground, Bernice, in Guyana, in about mid-February 2010, when the player was doing some coaching there and Dr King was also working there. On that occasion the player told Dr King that her knee was alright and that she felt OK.

21. The player suggested that she was expecting to hear further from Dr King with a recommendation for treatment of the knee. Dr King, on the other hand, saw no reason to contact the player again about her knee, given the recommendation that further surgery was not indicated. Dr King is not an employee of the WICB and only provides her services to it during and in relation to specific tours. We accept that she would have no reason to concern herself further with the player's knee condition or to contact the player again unless and until the issue should arise on a further tour.
22. On 12 March 2010, the player signed a standard form agreeing to be bound by the ICC Code. The document she signed was headed "International Cricket Council"; and "Player's Consent and Agreement to the ICC Anti-Doping Code". The document included confirmation of consent to testing and understanding of the ICC Code including agreement to review it as it may be revised annually. The ICC Code itself, of course, includes provisions ensuring the responsibility of players to ensure that no prohibited substances enter their body.
23. The T20 Cricket World Cup was scheduled to be played in the West Indies in April and May 2010. The player was part of the West Indies squad. At the start of the competition she and the other players were provided with a wallet card in the usual form summarising the anti-doping regime, setting out the prohibited list and giving help line telephone numbers for the purpose of seeking information and advice.

24. The player played in two matches for the West Indies; a one day international against Sri Lanka on 20 April 2010 in St Kitts, and a T20 match, also against Sri Lanka in St Kitts, four days later. The team played a further six matches in St Kitts and St Lucia, for which she was not selected, though that was not because of injury to her knee. Dr King was with the team and made a report stating “Nil Significant” for the player. The player did not report any symptoms in her knee during that competition. There was therefore no reason for further treatment to be considered or recommended.
25. In May, June and July 2010 the player was living by herself in New Amsterdam, Bernice, and training alone. The player told the Tribunal that she has never taken tablets for weight loss, nor to reduce swelling in the legs brought on by menstruation. She began to experience discomfort in her left knee again during this period. She continued to train despite the pain and it did not stop her from practising her sport, but she suffered and felt in need of treatment.
26. The player told the Tribunal, and we accept, that she spoke about her knee problem to Mr Reon King of the GCB on two occasions in about early July 2010, but we do not know what was said during those conversations. The player did not contact Dr King or the WICB. During July 2010 – we do not know the exact date – she went to the New Amsterdam Hospital, a government run hospital, in an attempt to seek medical advice and treatment.
27. She arrived at the hospital in the early morning, went to the out patients’ department and waited for about four hours, through the morning, but was not seen by a doctor. Unfortunately, this is not unusual in Guyana because of shortages of medical staff and resources. Since medical facilities in rural areas are scarce and expensive, it is common for patients to consult pharmacists instead. The player did so. She got in her car, which required her to lift (“heist”, in local parlance) her foot to get into the car.

28. She drove to the nearby pharmacy of Mr Gyandat Marray. He is an experienced pharmacist but not an expert in sports medicine. He did not know the player was an international athlete bound by anti-doping rules. She did not tell him these things. He is a follower of men's cricket but not the women's game. The player was one of many customers that day; to Mr Marray, there was nothing unusual about her visit.
29. When he gave evidence to the Tribunal by telephone, his recollection was that the player asked him to examine her foot. However, his written statement referred to her knee. He examined her left knee in the waiting area of the pharmacy. He recommended tablets called "Frusemide". These are manufactured by a company called Cipla Limited in India. Mr Marray buys his supplies of Frusemide in Guyana.
30. Frusemide tablets are commonly known as "water tablets" to reduce swelling. They can be bought over the counter in Guyana. Frusemide is not a pain killer and does not relieve pain. Mr Marray sells the tablets in cards of ten tablets. He buys them in boxes of ten such cards, each box thus containing 100 tablets. He sells the card of tablets alone, without any accompanying leaflet. He was not aware that the substance they contain, furosemide, is banned in sports.
31. The player gave evidence that she made an attempt to check that Frusemide did not contain any banned substance, before purchasing the tablets and using them. Although she was not a wholly reliable witness in all respects, we are prepared to accept that she made an attempt to carry out such a check. The ICC did not invite us to reject her evidence to that effect. She told us that she went from Mr Marray's pharmacy to a nearby internet café during the early afternoon. She is computer literate and able to understand and describe accurately operations such as "googling" and visiting websites.
32. We accept the player's evidence that she found the WADA prohibited list online and made some attempt, over 20 minutes or so, to check whether

“Frusemide” was on the list of banned substances. That list includes furosemide, spelt differently from Frusemide, which was the brand name of the tablets recommended by Mr Marray. Furosemide appeared in bold type under paragraph S.5 of the 2010 prohibited list, headed “Diuretics and Other Masking Agents”.

33. The player did not know what a diuretic is, nor that furosemide is a diuretic. She had no reason to focus her attention specifically on paragraph S.5. She told us that she focussed on the words in bold type, and the word “furosemide” was indeed in bold type, but so were the names of many other substances. Without knowing where to look within the prohibited list, it is a long and complex technical document for a person without scientific knowledge to look through.
34. So we do not find it particularly surprising that the player did not spot the word “furosemide” in the list. She did not make any other enquiry, such as telephoning any of the available numbers on her wallet card. We doubt whether she had her wallet card with her that day; if she had had it with her, she would not have needed to visit an internet café and go online to find the WADA prohibited list, for it appeared in full on her wallet card, including the reference to furosemide.
35. The player then returned to Mr Marray’s pharmacy and purchased a card of ten Frusemide tablets. The card of tablets she purchased was shown to us at the hearing. Five of the tablets remained. The player took one of the tablets on the day of purchase in July 2010 and obtained some relief from the swelling in her left knee. She subsequently took a further three tablets over the following year or so.
36. We do not know exactly when or where she took those three tablets. Presumably she took them in the West Indies, since she told us she did not take the tablets with her when she played with the West Indies team in Potchefstroom, South Africa in October 2010, nor when she toured India with

the team in January 2011. She took five of the tablets in total, including the one that later led to her positive test result.

37. In October 2010, the player was in South Africa with the West Indies team for the Women's Challenge competition. She played in five of the eight matches. She did not take her Frusemide tablets with her. Again, Dr King was the team physiotherapist. Dr King did not make any injury report concerning the player, who did not report any concerns about her left knee or any other injury. The player did not tell Dr King or anyone else about her Frusemide tablets.
38. After returning to the West Indies, the player attended an anti-doping training session in Guyana on 15 December 2010. The session was led by Ms Ayana Cooper, the WICB's Player Relations Officer. Ms Cooper made a presentation with slides, and discussion was encouraged. The session covered all aspects of the anti-doping regime, including the personal responsibility of players, the prohibited list and the consequences of violations.
39. The session lasted about 75 minutes. Not surprisingly, those present were urged always to seek medical advice on the contents of any medication before taking it, either from a personal medical adviser, or from the team doctor or physiotherapist – although the Guyana team did not have its own physiotherapist. The player did not ask any questions or refer to use of any medication. Ms Cooper warned against trying to understand fully the WADA prohibited list without the benefit of advice.
40. In January 2011, the player was again selected for the West Indies team on its tour of India. The player played in all eight matches on that tour. She did not take her Frusemide tablets with her to India. Dr King, again serving as the team's physiotherapist, made a report only that the player had suffered from a dizzy spell during a training session on 5 January 2011, before the first match. There was no mention of any problem with the player's left knee, nor of Frusemide or any other medication or treatment for it.

41. After that, the player did not play in any international matches until late August and September 2011, when a series of eight matches was played against Pakistan in St Vincent, Grenada and Guyana. Shortly before the start of the series, Dr King asked all the players to write on a piece of paper and give to her details of any medication they had taken during the previous six weeks. The player did not write anything down. Dr King asked her why she had not. She told Dr King that she was not taking any medication.
42. The player did not report any injury concerns at any stage during that series, and consequently the only report Dr King made about her was “Nil significant”. The player did not mention having taken Frusemide or any other medication for her left knee or anything else. She played in the first four matches of the series, in St Vincent, but not the fifth and sixth matches in Grenada, when the coach decided she should be rested, though not because of any injury.
43. The seventh and eighth matches were to take place on the player’s home soil, at Providence Stadium in Georgetown, Guyana. She was selected to play in those two matches, due to take place on 10 and 11 September 2011. On the night of 8-9 September, she was staying with the team at the Princess Hotel in Georgetown.
44. At about 12.30am in the early morning of 9 September 2011, at the Princess Hotel, the player experienced swelling in her left knee and took one of her six remaining tablets of Frusemide. The following day she played in the T20 match, without incident. The day after that, 11 September, she again played in the last match of the series, another T20 against Pakistan. The player scored two runs and took a wicket. The match went to a “super-over” finish, with the West Indies narrowly winning.
45. The player took part in the team’s enthusiastic post-match celebrations. She was then selected for doping control. She did not think she would be at risk of testing positive. She did not declare any medication on the doping control

form, which states “None” in the space where athletes are asked to declare any medication taken over the last seven days. She provided a urine sample at 10.55pm.

46. The player’s A sample was analysed at the WADA accredited laboratory in Montréal, Canada. It was found to contain furosemide, in an approximate concentration of 4400 ng/ml. The certificate of analysis was dated 4 October 2011.

### **The Proceedings**

47. The player was charged by letter dated 18 October 2011 with a doping offence under Article 2.1 of the ICC Code, namely the presence of a prohibited substance, furosemide, in the urine sample provided by her after the West Indies v. Pakistan T20 match on 11 September 2011 at Providence Stadium, Georgetown.
48. On 31 October 2011 Mr Datadin responded on the player’s behalf by email, stating that the player did not dispute the result of the A sample test and did not require her B sample to be analysed; that the prohibited substance was contained in a tablet named “fusemide” [sic] taken to alleviate swelling of her knee caused by retention of fluid; that she made reasonable efforts to avoid taking any banned substance; but that:

“her limited education [led] to her incorrectly concluding that FUSEMIDE would be listed if prohibited, without realising that individual substances were the essence of the list”.
49. In the same email, Mr Datadin on the player’s behalf requested an oral hearing, and enclosed a statement setting out in more detail his instructions, including the circumstances of the injury to the player’s left knee; investigation and treatment of the injury, including the two MRI scans and the surgery; liaison with the cricket authorities about the effects of the injury; and finally the taking

of the Frusemide tablet on “the night of 8<sup>th</sup> September 2011”, which we now know referred to the very early morning of 9 September 2011.

50. On 3 November 2011 the Chairman held a telephone hearing and made a procedural order by agreement, confirming the appointment of the other two Tribunal members, fixing the date of the hearing for 18 November 2011 and setting the deadlines for delivery of written briefs pursuant to Article 8.1.5.2 of the ICC Code. The parties’ written briefs were then delivered, though not quite in accordance with the schedule set out in the procedural order due to some technical difficulties with electronic transmission of documents.
51. As a result of those technical difficulties, an additional witness statement was served by the ICC the day before the hearing from Dr King, the physiotherapist who provides services to the Barbados national cricket team and the West Indies Cricket Board who had been named as a potential witness in the ICC’s Reply Brief. At the hearing, it was agreed (subject to the deletion of certain paragraphs) that the ICC would be permitted to rely on the witness statement of Dr King, and on oral evidence from her by telephone link to St Lucia.
52. The hearing took place in London on 18 November 2011. The player attended by video link from Trinidad. Mr Datadin for the player attended the hearing in London, as did Mr Higgins and Ms Rugless on behalf of the ICC. At the hearing, we heard brief opening statements from the ICC and the player, followed by the player’s evidence by video link. We then heard oral evidence from Mr Gyandat Marray by telephone link to Guyana, and from Dr Jacqueline King, by telephone link to St Lucia.
53. The parties agreed that written statements from Mr Reon Dane King of the GCB, Dr David Rabindranauth Samaroo of the Georgetown Public Hospital Corporation, and Ms Ayana Cooper of the WICB, should all be accepted in written form, without oral evidence from those three witnesses. The Tribunal also had before it a bundle of documents and a bundle of case law authorities.

54. The Tribunal was grateful for the constructive way in which all concerned gave their assistance at the hearing, enabling us to conclude it within the single day allocated and to announce the result at the conclusion of the hearing, with the written decision to follow as soon as possible thereafter.

**The Tribunal's Conclusions, with Reasons**

55. By the time the hearing before us concluded, the following matters were agreed:

- (1) that the player's sample contained furosemide;
- (2) that furosemide is prohibited in and out of competition (see paragraph S.5 of the 2011 Prohibited List);
- (3) that the player had no therapeutic use exemption ("TUE") permitting the use of furosemide at any time;
- (4) that the player has therefore committed a doping offence under Article 2.1 of the ICC Code (presence of a prohibited substance or metabolite in a player's sample);
- (5) that the player has not previously committed any doping offence;
- (6) that the player is not able to establish "No Fault or Negligence" within Article 10.5.1 of the ICC Code;
- (7) that it is not necessary for the Tribunal to decide whether the player could establish "No Significant Fault or Negligence" within Article 10.5.2 of the ICC Code;
- (8) that pursuant to Article 10.1 of the ICC Code, the player's individual results and performance statistics from the West Indies v. Pakistan match

on 11 September 2011 must be disqualified, with all resulting consequences;

- (9) that furosemide is a “Specified Substance” (not falling within the exceptions set out in the preamble to the 2011 Prohibited List) attracting the potential applicability of Article 10.4 for the purpose of reduced sanctions; and
- (10) that any period of ineligibility should commence on 26 October 2011 by reason of the player having effectively abstained voluntarily from international competition since that date.

56. In the light of those agreed matters, it was further agreed at the hearing that the remaining issues for the decision of the Tribunal were the following:

- (1) whether under Article 10.4 of the ICC Code the player could establish on the balance of probabilities how the prohibited substance entered her body;
- (2) if so, whether the player could establish to the comfortable satisfaction of the Tribunal, with corroborating evidence over and above the player’s word, the absence of any intent to enhance sport performance; and
- (3) what should be the period of ineligibility, if any.

*The first issue: how the prohibited substances entered the player’s body*

57. The player asserts that she has proved on the balance of probabilities that the prohibited substance, furosemide, entered her body when she took the Frusemide tablet at about 12.30am on 9 September 2011, at the Princess Hotel, Georgetown, i.e. that the substance entered her body by oral ingestion of a tablet at that time and location. The ICC did not positively assert otherwise, but left the matter to the Tribunal to determine, while making certain helpful points to guide us, in its Reply Brief.

58. The ICC accepts, having researched the contents of Frusemide tablets manufactured by Cipla Limited in India and sold over the counter in countries such as Guyana, that such tablets contain furosemide; a not unexpected conclusion given the similarity of the two words and the still extant phenomenon (notwithstanding steps towards uniformity) of variants in the spelling of substances sold under different names in different parts of the world.
59. There is no expert evidence before us as to whether the approximate concentration found in the player's A sample – 4400 ng/ml - is consistent with ingestion of a single Frusemide tablet about 46½ hours earlier. However, the Tribunal's understanding is that the player's explanation is, at any rate, not positively inconsistent with the approximate concentration found.
60. We consider that the evidence of the player and of Mr Marray, while not completely accurate in all respects, was essentially truthful; that Mr Marray's account of the provenance of the tablets he sold to the player is consistent with the research into Frusemide subsequently carried out by the ICC; that (as the ICC accepts) Frusemide would be a normal recommended treatment for swelling of the knee in rural parts of a relatively undeveloped country such as Guyana, though it would not be thought suitable in countries with sophisticated and well resourced medical services.
61. We are conscious also that the player has established the objective existence of the medical condition, treated with surgery in 2009, which according to the account of Dr Sony, led to removal of fluid on two occasions. We accept that the presence of such fluid in the knee is a condition that in Guyana would be likely to lead a pharmacist to recommend Frusemide.
62. As for the player's account of experiencing swelling in July 2010 and on 8 and 9 September 2011, we note that her experience of these symptoms is not objectively supported by evidence of complaints to Dr King or anyone else at the time; but we take into account that the presence of degenerative changes in

the player's knee meant that pain and swelling could occur spontaneously, and we accept the player's evidence that they did occur on those two occasions.

63. We note finally that there is no rival explanation for us to consider besides that advanced by the player. We conclude, in the light of the above, that the player's explanation is more likely than not to be the correct one. She has therefore discharged the onus on her of showing, on the balance of probabilities, how the prohibited substance entered her body.

*The second issue: absence of intent to enhance sport performance*

64. The second issue we have to decide is whether the player can establish to the comfortable satisfaction of the Tribunal, with corroborating evidence over and above the player's word (see Article 10.4.2 of the ICC Code), the absence of any intent to enhance sport performance. The player asserts that the evidence she has called should comfortably satisfy the Tribunal that the "Specified Substance" she ingested was not intended to enhance her sport performance.
65. The ICC accepts that there was an objective medical reason for treatment – namely, the pain and swelling in the player's left knee – and that treatment with furosemide, while not likely to be considered appropriate in a country with sophisticated medical services, would be considered an appropriate treatment in a country such as Guyana. The ICC does not make any positive case that player intended to enhance her performance, and accepts that if we accept her explanation of how the substance entered her body, we are likely to accept that it was for therapeutic purposes and not with intent to enhance performance.
66. As we observed in *ICC v. Tharanga*, a previous decision of this Tribunal dated 15 July 2011, it is easier to be comfortably satisfied of absence of intent to enhance performance in medical treatment cases than in dietary supplement cases, where there is no objective medical basis for ingestion of the substance in question. This is another such case. There is no suggestion that the player intended to use furosemide as a masking agent, although diuretics are used for

that purpose. Furosemide is not a stimulant and does not by its nature enhance performance.

67. On the basis of our findings of fact above, we are comfortably satisfied that the player's use of furosemide was not intended to enhance her performance. The Tribunal is therefore empowered by Article 10.4.1 of the ICC Code to impose, at a minimum, a reprimand and no period of ineligibility, and at a maximum, a period of ineligibility of two years.

*The third issue: length of period of ineligibility*

68. Under Article 10.4.2 of the ICC Code, the degree of the player's fault is the criterion we must consider in assessing any reduction in the period of ineligibility below two years. The fault must be that of the player personally, not her advisers or entourage, but a player will normally be personally at fault if she fails to obtain advice or if she takes and follows advice from inappropriate sources.
69. The player submitted, through Mr Datadin, that the degree of her fault was small and that the Tribunal should impose a period of ineligibility "at the very low end of the scale". Mr Datadin emphasised that this was her first and only doping offence and that the player had a genuine medical condition providing an objective justification for treatment.
70. Mr Datadin also stressed that the player had made reasonable efforts, before purchasing and ingesting the tablets recommended by Mr Marray, to ascertain that they were not prohibited; that it was not the player's fault that the spelling of "Frusemide" was different to that of "furosemide"; and that it was understandable that she had not spotted the latter on the prohibited list.
71. Mr Datadin asked us to bear in mind that the player comes from a humble background and has had a relatively limited education; that she rightly tried to see a doctor before resorting to Mr Marray's pharmacy, and that it is common

in rural Guyana to obtain from pharmacists medical treatment that would be provided by qualified doctors in more sophisticated and prosperous societies.

72. The ICC, through Mr Higgins, submitted that the starting point was the player's personal responsibility under Article 1.1.1 of the ICC Code for ensuring that all advisers as well as herself are aware of the requirements of the ICC Code; and under Article 1.1.3 for ensuring that anything the player "ingests or uses, as well as any medical treatment he/she receives, does not give rise to an anti-doping rule violation ...".
73. The ICC reminded us that the player had access to her wallet card from early 2010, before the tablets were purchased, and that the wallet card included the 2010 Prohibited List including furosemide, though accepting that this was regrettably spelt slightly differently from the brand name of the tablets she purchased. The wallet card also provided the telephone numbers of sources of advice that would have been easy to contact.
74. The ICC pointed out that the player had the benefit of a training session with Ms Cooper in December 2010 which, although it postdated the purchase of the tablets, predated the player's decision to take a tablet on 9 September 2011. The ICC did not accept, assuming that we accepted the player's account of having researched the WADA prohibited list online, that she had good grounds for confidence that her tablets were free from any prohibited substance merely because she had not found any reference to Frusemide on the WADA website.
75. Mr Higgins submitted that the player should have raised an enquiry with Ms Cooper at the December 2010 training session before risking taking the tablet which led to commission of this doping offence, especially since the player had not been able to see a doctor, Mr Marray not being medically qualified still less an expert in sports medicine; and that she did not tell him, as she should have done, that she was an international athlete subject to anti-doping rules.

76. In addition, submitted Mr Higgins, the player had ample opportunity to seek advice from a variety of sources: namely the WICB, Dr Jacqueline King, Mr Reon King, the ICC's anti-doping helpline, and the Caribbean Regional Anti-Doping Organisation. She should have obtained advice from one or more of those sources, but did not do so.
77. We considered these contentions carefully and evaluated them in the light of the facts of other cases helpfully drawn to our attention by the ICC in its Reply Brief, some involving use of furosemide and some, use of other specified substances.
78. The most useful factual comparisons were in *Drug Free Sport New Zealand v. Chalmers*, a decision of the Sports Tribunal of New Zealand dated 11 March 2010; *Dos Santos*, a decision of the Presidential Commission of the International Gymnastic Federation (FIG), 27 January 2010; *WADA and FIG v. Melnychenko*, CAS 2011/A/2403, 25 August 2011; and *WADA v. Van Jaarsveld*, decision of the Anti-Doping Appeal Tribunal of South Africa, 22 September 2011. However, each case ultimately turns on its own facts.
79. In the present case, we are prepared to accept, despite some inaccuracies and inconsistencies in the player's evidence, that before purchasing Frusemide tablets from Mr Marray, she made some attempt to check on the WADA website whether "Frusemide" appeared on the prohibited list, and that she did not find it, nor did she find "furosemide" on the list. The ICC did not invite us to disbelieve the player's evidence to that effect.
80. We accept that the player needed treatment for her knee and that it was quite urgent to obtain treatment. We accept that she attempted to secure treatment from a qualified doctor and that it was not her fault that she was unable to do so that day. We accept that it is not unusual to resort to a pharmacist in rural Guyana in such circumstances.

81. But the player had available to her plentiful sources of advice which would only have required simple telephone calls. She had previously spoken by telephone to Dr King to discuss the medical issue of her left knee. There was nothing to prevent her from doing so again. She had spoken to Mr Reon King twice shortly before purchasing the tablets. She could have asked him for advice. She had the ICC's anti-doping helpline number and email address on her wallet card nearby, but did not use those resources.
82. We take into account that the WADA 2010 Prohibited List is a lengthy, formidable technical document which to a lay person is difficult to interpret. We also note that the player would have no reason to focus on paragraph S.5 where furosemide is found, since she did not know what a diuretic is. However, she should have been aware of that and it is precisely for this reason that players are encouraged to take advice and have the responsibility under the ICC Code for obtaining necessary advice and acting on it.
83. Ms Cooper made this very point at the training session in December 2010, when she advised those present that they are unlikely to understand the prohibited list on their own and should get advice from their own medical adviser or a team physiotherapist before taking any medication. The player should have been alerted by this to the risk that her research may not have been sufficient. Yet she did not take any advice at that point, nor subsequently before swallowing the Frusemide tablet on 11 September 2011.
84. In short, the player's fault lay in making insufficient enquiries about the content of her tablets. We take into account that she will not lose any prize money as a result of the agreed disqualification of her results and performance statistics; but she will suffer a less tangible stigma and some loss of recognition, and may face a fight to regain her place in the team.

85. We considered these points carefully and announced at the conclusion of the oral hearing that we considered the appropriate period of ineligibility to be five months.
86. By way of footnote, we add one further point. It seems virtually certain that the player must have been doped with furosemide during the match played on 10 September 2011, the day before the match which produced the positive test result; such that, had the player been tested the previous day, her sample would have tested positive for furosemide.
87. Under the rules in the ICC Code, there appears to be little basis for taking this factor into account when assessing what period of ineligibility is appropriate. The sole criterion under Article 10.4.2 is the degree of the player's fault. As Mr Higgins correctly explained to us in *Tharanga*, this has the consequence that the extent of a player's contrition and any apology is irrelevant to the length of any period of ineligibility.
88. Similarly, it is largely irrelevant under the rules that the player is likely to have been doped in competition on an occasion prior to the match which produces the positive test result. The only relevance of that factor would be the very limited extent to which it might be said that a player's fault could be thought greater because of greater exposure to a risk of playing while doped.
89. We have taken this point into account, but it is of very limited weight. No doping offence has been laid at the player's door, nor proved, in relation to the match played on 10 September 2011. It is only because of her factual admission that we are able to conclude that she was probably doped when she played it. We must be careful not to punish her for an offence with which she is not charged.
90. Similarly, there appears to be no basis for disqualifying the player's results and performance statistics in relation to the match played on 10 September 2011, even though the player was probably doped when she played in that match.

The match on 10 September was not “the *International Match* in question”, within Article 9 of the ICC Code; nor was it another “*International Match*” in an “*ICC Event*”, within Article 10.1; nor, obviously, was it a subsequent “*International Match*” within Article 10.8.

### **The Tribunal’s Ruling**

91. Accordingly, for the reasons given above, the Tribunal:

- (1) confirms the commission of the doping offence specified in the notice of charge set out in the ICC’s letter dated 18 October 2011;
- (2) orders that the player’s individual results and performance statistics from the West Indies v. Pakistan Twenty20 international match held at Providence Stadium, Georgetown, Guyana, on 11 September 2011 shall be disqualified, with all resulting consequences, including individual medals and ranking points, any individual prizes obtained in that match and the non-inclusion of her performance statistics from that match towards any official individual averages and/or records;
- (3) finds that the player has succeeded in establishing by a balance of probability how the prohibited substance entered her body;
- (4) finds that the player has established to the comfortable satisfaction of the Tribunal that her use of the prohibited substance was not intended to enhance sport performance; and
- (5) declares the player ineligible for a period of five months commencing on 26 October 2011 and expiring at midnight London time on 25 March 2012 from participating in any capacity in any match or event covered by Article 10.1.1 of the ICC Code, other than authorised anti-doping education or rehabilitation programmes.

92. This decision may be appealed to the Court of Arbitration for Sport by any of the parties referred to in Article 13.2.2 of the ICC Code.

**Tim Kerr QC, Chairman**

**Dr Anik Sax**

**Professor Peter Sever**

**Dated: 14 December 2011**