

Decision Number 09/2017

PANEL OF THE IAAF ETHICS BOARD

2 March 2017

Ms Annabel Pennefather (Chairperson)

Mr Thomas Murray

Mr Lauri Tarasti

In the matter of Mr Harald Edletzberger and the IAAF Code of Ethics

DECISION

Introduction

1. This case concerns the alleged conduct of an athletes' representative, Mr Harald Edletzberger, ("Mr Edletzberger") on the day after the elections for the IAAF Council ("the Elections"), held during the IAAF Congress in Beijing in August 2015 ("Congress").
2. The complaint received by the IAAF Ethics Board ("the Ethics Board") was that Mr Edletzberger had been seen in the lobby of the hotel in which members of the IAAF Family were staying during Congress, (and for the purpose of the IAAF World Championships which followed thereafter), surrounded by a group of individuals of apparently African ethnic origin, and that it appeared that he owed money to the individuals. The complainant inferred that the exchange between Mr Edletzberger and the individuals was connected to the IAAF elections, which had taken place the previous day ("the Alleged Incident").
3. As an athletes' representative and delegate to Congress Mr Edletzberger is a member of the "IAAF family", as defined in the IAAF Code of Ethics ("the Code"), and is therefore subject to the Code and to the jurisdiction of the Ethics Board, in accordance with the procedural rules ("the Rules") and Statutes of the Ethics Board ("the Statutes").

4. Mr Edletzberger denied the allegation, explaining that while he did not dispute that the complainant had witnessed an incident of the type described, he was not involved; i.e. the complainant must have been mistaken when he identified Mr Edletzberger as the individual in the Alleged Incident.
5. The Panel has concluded that while the evidence of the complainant was credible and was to be preferred to the evidence of Mr Edletzberger, there was insufficient evidence from which to infer, applying the standard of “comfortable satisfaction”, that the conduct observed by the complainant was connected to the Elections, or was otherwise corrupt or likely to bring the sport of athletics into disrepute.

Procedural Background

6. On 21 August 2015 the complainant, a Mr David Grace QC, then President of Athletics Australia (“Mr Grace”) reported to Michael J Beloff QC, the Chairman of the Ethics Board (“the Chairman”) that he had seen the Alleged Incident take place the previous night (20 August 2015). He later provided the Chairman with a manuscript copy of the complaint.
7. On 3 December 2015 the Chairman determined that there was a case warranting investigation against Mr Edletzberger, and commenced investigation proceedings. He appointed a senior Singaporean lawyer and arbitrator, Mr Peter Koh (“Mr Koh”), to carry out the investigation.
8. Mr Koh reported back to the Ethics Board on 23 December 2015 recommending that the matter should not be taken forward to adjudication. The report was reviewed by a member of the Ethics Board, Mr Kevan Gosper (“Mr Gosper”), who endorsed Mr Koh’s recommendation. The report was then subject to a further review by the Chairman, pursuant to Procedural Rule (“Rule”) 13(11), who reviewed the case and requested that Mr Koh provide him with certain additional information. Having reviewed that additional information, the Chairman reached a fresh decision under Rule 13(11) that the matter should proceed to adjudication. In particular, the Chairman noted that the conflict of evidence between that put forward by Mr Grace and that put forward by Mr Edletzberger was best resolved by cross examination.

9. A Notification of Charge was sent to Mr Edletzberger, dated 21 June 2016. That notification is attached to this decision at Appendix A.
10. Mr Edletzberger responded to the Notification of Charge in two emails, dated 25 July 2016 and 31 July 2016, which he requested to be treated, alongside the Investigator's report, as his statement of defence. Mr Edletzberger denied the charges, in summary, as set out above, explaining that he was not involved in conduct of the type described by Mr Grace and that Mr Grace must have been mistaken as to who he had seen.

Law, Procedure and Approach

11. The case comes before the Panel in the manner prescribed by the Statutes and the Rules of the Ethics Board, dated November 2016. The Rules are themselves governed by and to be construed in accordance with Monegasque law (Rule 17(5)).
12. Rule 13(16) provides that in each proceeding it is for the Panel to determine its procedure, and provides that in particular the Panel may in appropriate cases appoint a prosecutor or counsel to the Panel to present the case against the parties.
13. The Panel, chaired by Ms Pennefather, took the view that this was an appropriate case in which to appoint a prosecutor, bearing in mind in particular that the case involved a direct clash of evidence between Mr Edletzberger and the complainant, which the Panel considered would best be explored through cross examination.
14. Rule 13(18) provides that the Panel shall have the discretion to determine whether a hearing should be held. The Panel decided in this case that it was appropriate to have a hearing, and that furthermore, bearing in mind Mr Edletzberger's request for the same, it was appropriate that the hearing be conducted with the Panel and Mr Edletzberger present in one room, rather than via video link.
15. An oral hearing was held in private in London on 10 January 2017. Mr Edletzberger attended in person.

16. Mr Grace gave evidence via video link from Australia. In addition to Mr Grace, the Panel heard evidence from Mr Brian Roe (“Mr Roe”), a member of the IAAF Technical Committee. Mr Roe also gave evidence via video link from Australia.
17. The Panel determined that Mr Grace and Mr Roe should give their oral evidence separately, without having listened to each other’s evidence. The Panel was of the view that while this was not strictly necessary as a matter of fairness, given that the case involved a direct clash of evidence between Mr Grace and Mr Edletzberger, it was important to ensure that there could be no suggestion that either Mr Grace or Mr Roe’s evidence had been influenced, however inadvertently, by their having listened to each other’s evidence at the hearing.
18. As to the applicable standard of proof, the Panel considered Rule 11(7) which provides that *“The standard of proof in all cases shall be determined on a sliding scale from, at minimum, a mere balance of probability (for the least serious violation) up to proof beyond a reasonable doubt (for the most serious violation). The Panel shall determine the applicable standard of proof in each case”*.
19. The Panel was of the view that this allegation was of a serious nature, involving corruption which would, if proven, seriously undermine the integrity of an IAAF election. At the same time, it was conscious that the behaviour was not the most serious violation – given that, for example, an allegation that someone had extorted money for the purposes of blackmail, was likely to be considered to be more serious, on a sliding scale. The Panel therefore considered that the conventional standard of proof for sports disciplinary proceedings, that of “comfortable satisfaction”, was appropriate, which is higher than the civil standard but lower than the criminal.
20. The Panel also bore in mind the following additional principles when conducting the hearing and reaching its decision:
 - 20.1. The burden of proof lies on the Ethics Board;
 - 20.2. In relation to the treatment of evidence, Rule 11 provides in relevant part that:

“Types of evidence

- (1) *The Ethics Commission shall not be bound by rules governing the admissibility of evidence. Facts relating to a violation of the Code may be established by any means deemed by the “Panel” hearing the case (the Panel) to be reliable.*
- (2) *Types of evidence shall include: the investigator’s report and other forms of evidence such as admissions, documents, oral evidence, video or audio evidence, evidence based on electronic media in any form and any such other form of proof as the Panel may deem to be reliable.*

Inadmissible evidence

- (3) *Evidence that obviously does not serve to establish relevant facts shall be rejected.*

Evaluation of evidence

- (4) *The Panel shall have the sole discretion regarding evaluation of the evidence.*
- (5) *[...]*
- (6) *The Panel may draw an inference adverse to the party if the party, after a reasonable request to attend a hearing, answer specific questions or otherwise provide evidence, refuses to do so.”*

The evidence

21. The Panel notes that this is a case, as submitted by the appointed prosecutor, Mr James Segan (“the Prosecutor”), in which there is a quite stark dispute of fact as to what occurred in the lobby of the CNCC Hotel on the evening of 20 August 2015. Mr Edletzberger is not disputing Mr Grace’s bona fides. He accepts that the conversation described took place. He simply denies having been part of the conversation himself and is advancing in effect a case of mistaken identity.

Mr Grace

22. Mr Grace’s evidence, contained in the original complaint, in his witness statement dated 26 October 2016, and in his oral evidence at the hearing, was as follows.
23. Mr Grace attended Congress in his capacity as the then President of Athletics Australia. On the evening of 20 August 2015, the day after the Elections, at approximately 22:00pm

(no earlier than 21:45pm and no later than 22:30pm), he observed a man surrounded by three or four people of apparently African ethnic origin wearing IAAF accreditations, standing in the lobby of the CNCC Hotel, Beijing. The group were standing approximately 10 - 15 meters away from Mr Grace, who was standing near the reception desk of the hotel. The group were standing between Mr Grace and the security station, which was positioned immediately inside the entrance to the hotel.

24. Mr Grace observed that the individuals of apparently African ethnic origin were in a state of consternation, and were remonstrating with the man, moving their hands and arms. As he continued to observe the group he saw the man speaking on a mobile telephone and noted that the man appeared to be anxious. Mr Grace clarified in oral evidence that the man was speaking on the telephone for the majority of the time during which he observed him.
25. Mr Grace observed that at one point during the discussions the man said quite loudly and forcibly "I haven't got enough". He also observed that the man appeared to be anxious. Mr Grace explained that while he could not hear what the African individuals were saying, it appeared from their movements and body language that they wanted something from the man. This led Mr Grace to the conclusion that the African persons were asking the man for money, which he did not have.
26. Mr Grace then observed the man and the group move away from him and towards the elevators at the rear of the lobby, and then back again.
27. At the time when the man and group had moved away and were positioned between the security station and the elevators, Mr Grace saw Mr Roe, a colleague of his from Australia. Mr Grace greeted Mr Roe and then pointed across the lobby to the man conversing with the African individuals and asked Mr Roe if he knew who the man was. Mr Roe told him that the man was Mr Edletzberger.
28. After Mr Roe had identified the man as Mr Edletzberger, Mr Grace saw Mr Edletzberger leave the group and pace up and down in the lobby near to the security station area. At one stage he passed in front of Mr Grace and Mr Roe, a few meters away. As he passed, he was on his mobile telephone and appeared to be anxious.

29. Mr Grace observed the group for approximately two minutes in total. During that time, he did not take his eyes off the group, except to ask Mr Roe to identify the man.
30. Mr Grace formed the impression from what he had seen and heard that Mr Edletzberger had insufficient funds to satisfy the demands that were being made of him. He inferred that monies were owed to the Africans. He also drew the inference, given the time and location of what he had seen, that it was connected to the Elections that had been held on the previous day.
31. Mr Grace was unable to identify any of the individuals in the group that surrounded Mr Edletzberger. He explained that this was because he was focusing on Mr Edletzberger, who appeared to be under attack from the group surrounding him.
32. Mr Grace also gave evidence that he discussed his observations briefly with Mr Roe at the time of the Alleged Incident, and that he discussed the matter in person with Michael J Beloff QC, Chairman of the Ethics Board on the following evening, giving him a manuscript statement a few days later.
33. Mr Grace confirmed in oral evidence, by reference to a photograph of Mr Edletzberger, that the man that he saw during the Alleged Incident was Mr Edletzberger.

Mr Roe

34. Mr Roe explained that he has known Mr Edletzberger for at least 20 years, both in the capacity of representing athletes and on behalf of the Australian Athletics Federation and the IAAF. He has also, over the years, grown to know Mr Edletzberger socially. As a result, his evidence was that he has no doubt at all as to his ability to identify Mr Edletzberger by sight.
35. Mr Roe recalls that on either the 20 or 21 August 2015 – he was unable to confirm which – he arrived back to the CNCC Hotel after a dinner outside the hotel. As he entered the hotel he saw Mr Grace standing in the lobby. Mr Grace was standing between the check-in desk and the lounge area. Mr Roe saw Mr Grace gesture to him to join him. When Mr Roe reached him Mr Grace pointed to a person standing with a small group of other

people, who were all wearing IAAF accreditation cards. Mr Grace pointed to a particular person in the group, and Mr Roe recognised him immediately as Mr Edletzberger.

36. Mr Roe recalled that at the time when he identified Mr Edletzberger, he and Mr Grace were a maximum of 10 - 15 meters away from the group, and he had a clear view of Mr Edletzberger. He confirmed in oral evidence that he was 100 per cent sure that the person that he was asked to identify by Mr Grace was Mr Edletzberger.
37. Mr Roe explained that he did not have a detailed recollection of the group of individuals that were surrounding Mr Edletzberger, but that to the best of his recollection they were of African or African/Middle Eastern ethnicity. Mr Roe explained that the reasons why he had formed that view of their ethnicity were first, that they had darker skin than his own, and second, by process of elimination, in that he knows most of the members of the IAAF family from areas other than Africa and the Middle East, and did not recognise these individuals.
38. He explained that he had no particular reason to remember the events of that evening, and that as such, aside from remembering that he had identified Mr Edletzberger for Mr Grace, his recollection was not good. He could not recall whether he saw any of the events described by Mr Grace immediately following his identification of Mr Edletzberger.
39. In particular, he could not recall whether Mr Edletzberger was on the telephone or whether he appeared to be anxious.
40. Mr Roe does not recall what else Mr Grace said to him after he identified Mr Edletzberger. To the best of his recollection, he does not think that Mr Grace told him why he had asked him to identify Mr Edletzberger, but he acknowledged that it was possible, given that he had no reason at the time to take particular note of the events. He recalls that it was around a year later, within a few weeks of the Rio Olympics, that Mr Grace told him that he had made a complaint to the Ethics Board about Mr Edletzberger. Mr Grace told him that the only reason he had known that it was Mr Edletzberger was because Mr Roe had identified him.

Mr Edletzberger

41. Mr Edletzberger accepted that he would have been in the lobby of the CNCC Hotel at some point following the dinner on 20 August 2015, between 21.30pm and 23:00pm.
42. He also accepted that Mr Roe would have been able to recognise him, having been acquainted with him for some time.
43. Mr Edletzberger further accepted that he had no reason to doubt Mr Grace's recollection that the Alleged Incident had taken place.
44. His position was, however, that he must have been misidentified; that the person that Mr Grace saw involved in the Alleged Incident was not him.
45. Mr Edletzberger specifically denied being involved in a conversation of the kind alleged by Mr Grace. In particular, he denied being surrounded by individuals of African ethnic origin, denied having a conversation with them about money, denied saying the words "I haven't got enough" at the relevant time, and denied having had a telephone conversation in the lobby at the relevant time.
46. He explained that while in the lobby on the evening in question, it is possible that he was standing in a group of people, as various people might have approached him. He also explained that he was often speaking with Asian and Middle Eastern individuals. He did not suggest, however, that he was involved in any conversations that were sufficiently similar to that reported by Mr Grace, that Mr Grace might simply have been mistaken as to the nature and subject of the exchange.
47. As to his case that the conflict between his evidence and that of Mr Grace and Mr Roe's must have been the result of mistaken identity, Mr Edletzberger suggested as follows:
 - 47.1. That he had been told by others within the IAAF of the identity of the person likely to have been involved in the Alleged Incident. Mr Edletzberger provided the Panel with a photograph of this individual and explained that this person was always anxious and always on the telephone and that he had connections with Africa;

- 47.2. Further or alternatively, that Mr Edletzberger may have been passing through the area near the elevators at the moment that Mr Grace asked Mr Roe to identify him, and that Mr Roe identified him instead of the person that Mr Grace was in fact referring to (Mr Roe's recollection being limited to the fact that Mr Edletzberger was there, and the fact that the individuals surrounding him were of African or African/Middle Eastern origin).
48. Mr Edletzberger also suggested that given that Mr Roe did not recall anything of the incident other than that the individuals that Mr Edletzberger was standing with were of African or African/Middle Eastern origin, and could not recall whether it was on the night of 20 or 21 August, it was possible that Mr Roe was recalling having identified Mr Edletzberger on a different occasion.
49. As to the alleged telephone conversation, on the day of the hearing Mr Edletzberger provided the Panel with two sets of telephone records covering 20 August 2015. His evidence was that the first was a screenshot of information from his Chinese SIM card, indicating incoming and outgoing calls, and that the second was an itemised spreadsheet provided by his network provider for his Austrian mobile telephone. He explained that he only had two mobile telephones with him in Beijing, and that the Chinese SIM card was used in his UAE handset.
50. Mr Edletzberger's evidence, which is prima facie supported by the two pages of telephone records, was that he received only one telephone call on the evening of 20 August, which was a call at 21.08pm local time from his mother in Austria, and that as such it was clear that he was not on the telephone at the relevant time.
51. Mr Edletzberger explained that he attended Congress as a delegate for Romania, and that the President of the Romanian Athletics Federation, Mr Ion Sandhu, funded his stay in Beijing. Mr Edletzberger confirmed in his oral evidence that Mr Sandhu had been a candidate for the Elections but had not been elected as an individual Council member. Mr Edletzberger also confirmed in his oral evidence that he knew another candidate in the Elections well, Mr Al Kamali from the UAE, through living and working in the UAE for a number of years. Mr Al Kamali stood for the Elections and was elected as an individual Council member.

Analysis of Evidence

52. The Panel considers that Mr Grace gave credible and honest evidence. It did not detect that he had any motivation to have fabricated or embellished his evidence. The Panel also formed the view that Mr Grace was a cautious witness; he explained clearly those aspects of the Alleged Incident that he recalled, and those that he did not. In particular, he acknowledged that he recalled overhearing only one short snippet of conversation in the exchange.
53. Mr Roe also gave credible and compelling evidence. The Panel considered that his credibility was enhanced by the fact that he stated with care what he could reliably remember and what he could not, and that he did not seek to give evidence on matters where his recollection was weak.
54. The Panel accepted Mr Grace's evidence that he had a good and uninterrupted view of the Alleged Incident, albeit from 10-15 metres away.
55. The Panel also accepted Mr Grace's evidence as to the character of the conversation, including that the man he witnessed was anxious and that the individuals around him were gesticulating with their hands and arms.
56. The Panel also accepted Mr Grace's recollection that the man said "I haven't got enough", or words to that effect.
57. As to Mr Roe's evidence, the Panel accepted that Mr Roe had a clear unobstructed view of the Alleged Incident and would have had no difficulty identifying Mr Edletzberger. Mr Edletzberger also accepted that Mr Roe would be able to identify him.
58. As to the ethnicity of the group surrounding Mr Edletzberger, the Panel took into account Mr Grace's strong recollection that the individuals were of "apparently" African ethnic origin. The Panel also took into account Mr Roe's recollection, which was weaker, but which was supported by coherent analysis as to how he reached his conclusion, that the individuals were of African/African Middle Eastern ethnicity. The Panel also bore in mind the diversity of appearance of individuals within the African continent. It

concluded that it was comfortably satisfied that the individuals were of African and/or Middle Eastern ethnicity, but that it could not be satisfied that the individuals were of only African ethnic origin.

59. The Panel has found it extremely difficult to reconcile its findings about Mr Grace and Mr Roe's evidence with the evidence given by Mr Edletzberger. The Panel found Mr Edletzberger to be candid when it served his interests to be – for example, when suggesting another individual who might have been responsible for corrupt activity in relation to the Elections only on the day of the hearing itself – but that he gave the impression of being less focused on providing his own account of what he says he did on the evening in question.
60. Mr Roe's evidence, which was not seen by the investigator, Mr Koh, or Mr Gosper when reviewing the investigation report, made the suggestion that this was a case of mistaken identity extremely difficult.
61. The Panel was not persuaded by Mr Edletzberger's suggestion that Mr Roe might have inadvertently identified a different individual than that to which Mr Grace was pointing. Mr Roe's evidence was that he observed the group for 3 – 4 minutes. The Panel is of the view that it is not plausible to suggest, on the basis of Mr Roe and Mr Grace's evidence, that they were looking at two different individuals. Mr Grace and Mr Roe would have to have been mistaken to a quite impossible extent.
62. The suggestion by Mr Edletzberger that he might have been passing through the area at an inopportune moment and been identified by Mr Roe when in fact Mr Grace had been observing a different person similarly does not bear scrutiny when considered against Mr Grace and Mr Roe's clear recollection of the point at which the identification was made. Mr Roe was very fair in his acknowledgement that he did not see as much of the conversation as Mr Grace but his evidence was very clear that it was Mr Edletzberger involved in the conversation that Mr Grace saw.
63. Similarly, the Panel does not accept Mr Edletzberger's alternative explanation, that he was confused with the other individual whose photograph he provided at the hearing. The Panel finds it very hard to believe, given the lack of physical resemblance between

the two individuals that they might have been confused – particularly so by Mr Roe, who Mr Edletzberger accepted would have no problem identifying him.

64. The other possible explanation advanced by Mr Edletzberger for the first time at the hearing was that given that Mr Roe could not recall whether he was asked to identify Mr Edletzberger on 20 or 21 August, and given the limits of his recollection, he might have identified Mr Edletzberger for Mr Grace on a different occasion. The Panel cannot accept that explanation, either. Mr Roe’s recollection was that the incident must have happened either on 20 or 21 August – not that that he could not remember at all the date on which it happened. Mr Grace was very clear in his evidence that the Alleged Incident took place on the 20 August 2015 and Mr Roe’s recollection of where he met Mr Grace in the hotel lobby, the point from which he identified Mr Edletzberger, and the fact that Mr Edletzberger was surrounded by individuals of African or African/Middle Eastern ethnic origin was consistent with Mr Grace’s evidence to such an extent that the Panel is satisfied that Mr Grace and Mr Roe were recalling the same occasion.
65. The Panel is therefore of the view that Mr Roe correctly identified Mr Edletzberger as the man that Mr Grace saw surrounded by individuals in the lobby of the CNCC Hotel on the evening of 20 August 2015.
66. As set out above, the Panel is of the view that it is possible that Mr Grace and Mr Roe observed Mr Edletzberger surrounded by individuals of Middle Eastern origin, rather than of African origin, which would be consistent with Mr Edletzberger’s recollection that he may have spoken to Middle Eastern individuals during the evening in question. That does not explain, however (1) why Mr Grace’s evidence is that he was on the telephone – Mr Edletzberger having specifically denied, with reference to telephone records, that he was on the telephone at the relevant time and (2) why Mr Grace formed the impression that the individuals were talking about monies due to them and said words to the effect of “I haven’t got enough” – Mr Edletzberger having specifically denied that he was involved in discussions relating to finances and having specifically denied using those words at the relevant time.
67. As to (1), the Panel have carefully considered the telephone records provided by Mr Edletzberger. Ultimately, the Panel does not consider that these records assist it. First, the records were produced on the day of the hearing, despite Mr Edletzberger having

been aware that these records were going to be of relevance in the case from July 2016 at the latest. The Panel therefore had no way of testing their veracity. Second, and in any event, the records cannot be determinative of whether Mr Edletzberger was in fact on a mobile telephone, given that it is of course possible that Mr Edletzberger had more than two telephones, or had borrowed a telephone – either from one of the group of individuals that was surrounding him, or from someone else. Mr Edletzberger himself acknowledged that he had a separate UAE SIM card. He did not produce telephone records for that SIM card.

68. The Panel also took into account that Mr Roe did not recall whether Mr Edletzberger was on his mobile telephone or not. Again, the Panel did not consider that this assisted them either way; Mr Roe's recollection about the events surrounding his identification of Mr Edletzberger was not strong. His evidence was not that Mr Edletzberger was not on the telephone; simply that he did not remember.
69. Taking into account Mr Grace's clear recollection that the man that he observed was on the telephone and that at one stage the man, who by then had been identified by Mr Roe as Mr Edletzberger, passed directly in front of him whilst still on his mobile telephone, and in the light of the view formed by the Panel as stated above that Mr Grace gave credible and honest evidence, the Panel accepts Mr Grace's evidence, and is comfortably satisfied that the man identified as Mr Edletzberger was on the telephone at the relevant time.
70. As to (2), however, the Panel feels that despite Mr Grace's credibility and very clear and straightforward evidence, there is insufficient information from which it can conclude, to its comfortable satisfaction, that the individuals were talking about monies due to them. As set out above, the Panel is satisfied that Mr Grace heard the words "I haven't got enough", and observed the body language of the individuals, but is not satisfied that it can comfortably infer from that that the individuals were necessarily talking about money that was owed to them. Unfortunately, given that the closed circuit television records were destroyed one month after the Alleged Incident at the CNCC Hotel, as stated in Mr Koh's report, there is no way for the Panel to independently assess whether that inference was one that could be safely drawn. Mr Grace was candid about the fact that he had only heard a short snippet of conversation, and he did not see any money (or any other items) actually being exchanged.

71. It appears to the Panel that there might be other explanations for the phrase that Mr Grace heard Mr Edletzberger use and for the body language of the individuals surrounding him, that they cannot rule out, having regard to Mr Edletzberger's role as an athletes' representative.
72. Having drawn the inference that the conversation was about monies owed to the individuals, Mr Grace then inferred that the discussions were something to do with the Elections held the previous day. Mr Grace did not hear any reference to the Elections.
73. The Panel is similarly not able to draw the inference to its comfortable satisfaction that the conversations related to the Elections. In its view it would have been difficult, even had it been comfortably satisfied that the conversation was about monies owed by Mr Edletzberger to the individuals, to conclude that it was comfortably satisfied – without further evidence – that the conversation related to the Elections. The Panel considered whether Mr Edletzberger's links to Mr Sandhu or to Mr Al Kamali could provide sufficient additional evidence to support such an inference. The Panel concluded that the fact that Mr Edletzberger was a Romanian delegate, and the fact that he knew Mr Al Kamali and was supporting Mr Al Kamali's attempts to ensure the UAE had a bigger presence on the world stage in athletics, were not by themselves sufficient to suggest that Mr Edletzberger would have engaged in corrupt practice on behalf of either of them.
74. The Panel has borne in mind when reaching that conclusion that Mr Edletzberger's defence was one of mistaken identity. The Panel, having found that in fact Mr Edletzberger was involved in the Alleged Incident, has necessarily considered why it is that Mr Edletzberger denied being involved. One possible inference of course, as suggested by the Prosecutor, is that he denied being involved because the activity he engaged in was indeed connected to the Elections and was corrupt. It is also possible, however, that Mr Edletzberger's recollection of the events of that evening was poor, and that in an attempt to distance himself from the allegations he thought it safer to deny being involved in any conversation of the kind recalled by Mr Grace.
75. The Panel, when reaching its conclusion that it is unable to draw the same inferences that Mr Grace, who witnessed the incident, drew, had to bear in mind that the standard

of proof that it was applying (“comfortable satisfaction”) was higher than the civil standard (i.e. higher than the balance of probabilities).

Conclusions

76. On the basis of the analysis set out above the Panel finds the charges against Mr Edletzberger of breach of Articles C1 (Integrity) (11), C1 (Integrity) (12), C1 (Integrity) (15) and C4 (Good Faith (20) of the Code, as set out in Appendix A to this decision, not proven. In particular, the Panel concluded that in the absence of a finding that the conversation was about monies owed, or was in some way connected to the Elections, it could not find that Mr Edletzberger’s behaviour adversely affected the reputation of the IAAF or the sport of athletics.
77. Accordingly, there shall be no sanction.
78. The Panel wishes to make it clear that any activities that undermine the integrity of the IAAF, including activities which undermine its election processes, are contrary to the interests of the sport of athletics and if and when proven will be sanctioned appropriately. The Rules Concerning Candidacy for IAAF Office and Conduct of Elections are clearly set out in Appendix 3 to the Code.
79. In this context the Panel also wishes to remind members of the IAAF Family that they are each subject to the obligation under the Code to immediately report any breach of the Code to the Chairperson of the IAAF Ethics Board (B - Principles of the Code, paragraph 7). A failure to report, or to otherwise be complicit in any act or omission that constitutes or culminates in the commission of a breach of the Code is itself a violation of the Code (B - Principles of the Code, paragraph 10). It is the responsibility of each member of the IAAF Family to satisfy himself or herself that he/she understands the Code and is able to apply it.
80. The Panel records, in this respect, their gratitude to the complainant for raising his concerns with the Ethics Board. Despite the fact that the complaint has ultimately not been upheld, it is crucial for the proper functioning of the sport of athletics that legitimate concerns such as those held by the complainant are raised and, where appropriate, investigated by the Ethics Board.

Costs and Appeal

81. As the Panel has determined that there has been no breach of the Code, the IAAF shall bear the procedural costs of the case. The IAAF and Mr Edletzberger shall each bear their own legal costs.
82. This decision is final subject to any appeal lodged with the Court of Arbitration for Sport according to its rules, pursuant to Articles F35-38 of the Code.

Ms Annabel Pennefather (Chairperson)

Mr Thomas Murray

Mr Lauri Tarasti

2 March 2017

APPENDIX A

HARALD EDLETZBERGER

NOTIFICATION OF CHARGE OF BREACH OF THE IAAF CODE OF ETHICS

1. In accordance with Rule 13(14) of the IAAF Ethics Board's Procedural Rules ("PR"), this document provides you with written notice of the following matters:
 - a. The fact that you have been charged with a case to answer for breaches of the IAAF Code of Ethics.
 - b. The specific violations of the Code that you are alleged to have committed.
 - c. Details of the alleged acts and/or omissions relied upon in support of the charge.
 - d. The range of sanctions applicable under the Code if it is established that you have committed the violation.
 - e. Your options to admit or deny the charge, in full or in part and to make written submissions on the appropriate sanction if the charge is upheld.

(A) Case to Answer

2. On 4 December 2015 you were notified that the Chairman of the Ethics Commission (now renamed IAAF Ethics Board) ("the Chairman") had concluded, after receipt of a complaint, that there was a prima facie case that you had breached the IAAF's Code of Ethics in connection with the IAAF council elections of 2015 which took place in Beijing and had determined to appoint Mr Peter Koh to investigate it (PR rule 13(4)).
3. Mr Koh has been in direct contact with you during the course of his investigation.
4. Mr Koh found in his investigation report ("**the Investigation Report**") that the complainant's observations about your conduct said to amount to such breach were based on body language and facial expressions only of those said to be involved, and could not be corroborated - particularly given that the CCTV footage of the area of the hotel lobby where the conduct was said to have occurred had been erased. Accordingly he found the case of breach unproven and recommended that the matter should not proceed to adjudication (PR rule 13(9)).
5. Following receipt of the Investigation Report, the Chairman appointed a member of the Board, Mr Kevan Gosper, to review the Investigation Report and investigation files in accordance with PR rule 13(10). Mr Gosper concurred with Mr Koh that there was insufficient evidence to proceed to adjudication. In accordance with PR rule 13(11) the matter was then referred to the Chairman who requested Mr Koh to provide him with some additional information and clarification about the evidence on which his findings were made.
6. Having reviewed the available evidence including that additionally provided by Mr Koh

the Chairman has now reached a fresh decision, and determined that for the reasons set out below there is sufficient evidence to proceed to adjudication in this matter (PR rule 13(11)).

7. Accordingly, the Chairman has directed that adjudicatory proceedings be commenced against you as you have a case to answer in respect of the charge of breach of the Code of Ethics set out below in accordance with PR rule 13(14) in this Notification of Charge.

(B) Specific Violations Alleged

8. The specific violations alleged against you are that you have acted in breach of the following provisions of the Code of Ethics as in force in August 2015:
 - a. Article C1 (Integrity) (11) (applicable to all members of the IAAF Family) *“Persons subject to the Code shall not act in a manner likely to affect adversely the reputation of the IAAF, or the sport of Athletics generally, nor shall they act in a manner likely to bring the sport into disrepute.”*
 - b. Article C1 (Integrity) (12) (applicable to all members of the IAAF Family) *“Persons subject to the Code shall act with the utmost integrity, honesty and responsibility in fulfilling their respective roles in the sport of Athletics.”*
 - c. Article C1 (Integrity) (15) (applicable to all members of the IAAF Family) *“Persons subject to the Code, shall not offer, promise, give, solicit or accept any personal or undue pecuniary or other benefit (or the legitimate expectation of a benefit irrespective of whether such benefit is in fact given or received) in connection with their activities or duties in Athletics.”*
 - d. Article C4 (Good Faith) (20) (applicable to all members of the IAAF Family) *“Members of the IAAF Family shall act in good faith towards each other with mutual trust and understanding in all their dealings.”*

(C) Details of the Alleged Acts and Omissions Relied Upon

9. The Chairman relies essentially on the statement of the then President of Athletics Australia Mr David Grace QC (“the Complainant”), dated 9 October 2015, in support of the charges against you. In that statement the Complainant asserted as follows:
 - a. At approximately 10.30pm on the day of the IAAF Council elections in Beijing he was in the foyer of the CNCC Hotel and saw you surrounded by a number of individuals who appeared to be of African ethnic origin;
 - b. Those individuals were in a “state of some consternation” and appeared to be discussing money owed to them;
 - c. It appeared that you had insufficient funds available to satisfy their demands;
 - d. You were on the telephone during this exchange and at one stage left the group and paced up and down in the foyer anxiously;

- e. It appeared from the timing and location of these events as well as from what he saw and heard that you owed money to the group of people and that the discussions were connected to the Council elections.
10. During the course of the investigation the Complainant further explained that:
- f. He heard you say words to the effect of “I haven’t got enough”;
 - g. The individuals of African ethnic origin who were wearing official accreditations around their necks were “loud in their remonstrations”.

The Chairman relies on these items of evidence too.

11. You accepted in the course of Mr Koh’s investigation that it was likely that you were in the foyer of the CNCC Hotel between 9.30pm and 11pm. However you denied (i) being “surrounded” at all; (ii) having been asked for money as alleged; (iii) having been on the telephone in the lobby at the relevant time. You also explained that the group that you were most likely with in the foyer on that evening were not of African ethnic origin but were European or Asian.
12. There does not appear to be any plausible explanation as to how your and the Complainant’s version of events can be reconciled.
13. The Complainant is a respected member of the international Athletics community and a senior lawyer. There is no evidence aside from your own to suggest that he was (or could have been) mistaken as to what he saw or that he would have any reason whatsoever to give a dishonest account about it. If his account is accurate, the proper inference may be that you were being asked on that occasion to pay monies promised to certain African delegates for their support of one or more candidates in the IAAF council elections.
14. On that basis the Chairman has determined that there is sufficient evidence against you to proceed to adjudication before a Panel appointed by him (PR rule 13(14)). You are, however, reminded that unless and until such time as the Panel finds you in breach of the Code of Ethics you enjoy the presumption of innocence.
15. It is now for you to decide whether to admit or deny the charges against you. It is also open to you to make submissions on the appropriate sanction to be imposed if any of charges are upheld by the Panel, identifying anything which you would like the Panel to take into account by way of mitigation. In disciplinary cases the Panel is able to impose any of a broad range of sanctions as set out below.
16. I would be grateful if you could also indicate to me whether you:
- a. Request an oral hearing (and if so whether you are content for that to be by video conference);
 - b. Alternatively, whether you are content for the case to be determined by the Panel in writing, taking into account any written defence/evidence or documents you submit.

(D) Range of Sanctions

17. The range of sanctions open to the Board to impose under the Code if it is established that you have committed the violation(s) are set out at Section D17 of the Statutes of the Ethics Board, as follows:
 - a. Issuing a caution or censure;
 - b. Ordering you to pay a fine;
 - c. Suspending you (with or without conditions) or expelling you from any relevant office held;
 - d. Suspending or banning you from taking part in any Athletics-related activity, including Events and Competitions;
 - e. Removing any award or other honour bestowed on the person by the IAAF;
 - f. Imposing any sanctions as may be set out in specific Rules; or
 - g. Imposing any other sanction that the Panel may deem to be appropriate, including community service within athletics and/or restitution.

(E) Timings and Other Matters

18. A Panel of the Ethics Board has been duly constituted to determine the charges in this case. The Members are as follows:
 - a. Annabel Pennefather
 - b. Lauri Tarasti
 - c. Thomas Murray
19. In accordance with PR rule 13(17) the Chairman has fixed the following time limits:
 - a. A statement of your defence (if you are defending the charges) including any defence of lack of jurisdiction (if any) or a defence on the merits to be filed with the Ethics Board by Monday 4 July 2016.
 - b. Notification whether you request an oral hearing to be filed with the Board by Monday 4 July 2016.
 - c. Any evidence upon which you intend to rely, including a list of all witnesses you will call, together with written statements of evidence to be filed with the Board by Monday 11 July 2016.
20. For the avoidance of any doubt all documents are to be filed by 4pm UK time (GMT+1).

21. All communications should be sent to me as Legal Secretary of the Board by email, fax, or post using the contact details below. Likewise, all documents to be filed with the Board should be sent to me by the same methods.

Jana Sadler-Forster

Legal Secretary to the IAAF Ethics Board

Email:

janasadler-forster@blackstonechambers.com

Fax:

+44 20 7822 0853

Address:

Blackstone Chambers
Blackstone House
Temple
London EC4Y 9BW

21 June 2016