Arbitration CAS 2017/A/5006 Harold Mayne-Nicholls v. Fédération Internationale de Football Association (FIFA), award of 14 July 2017

Panel: Prof. Martin Schimke (Germany), President; Mr Bernard Hanotiau (Belgium); Prof. Luigi Fumagalli (Italy)

Football
Disciplinary sanctions against a FIFA official for breach of the FIFA Code of Ethics (FCE)
Exclusion to the retroactive effect of the FCE edition 2012
Distinction between a request to receive an undue benefit and accepting an undue benefit
Consequence of the non prohibition of attempts to receive an undue benefit under FCE edition 2009
Distinction between an attempt to receive an undue benefit and a request to receive an undue benefit

1. **Pursuant to art. 3 of the 2012 edition of the FIFA Code of Ethics (FCE 2012), *inter alia*, said Code shall apply to conduct whenever it occurred including before the passing of the rules contained therein. No individual shall however be sanctioned for breach of said Code on account of an act or omission which would not have contravened the code applicable at the time it was committed nor subjected to a sanction greater than the maximum sanction applicable at the time the conduct occurred. In this context, although the starting point is different, art. 3 of the FCE 2012 follows a similar approach to the traditional *lex mitior* principle, which qualifies the general prohibition against retroactive rule-making by permitting the retroactive application of a new rule where its effect is more favourable to the person concerned than the rule in force at the time of relevant events.**

2. **There is a qualitative distinction between accepting an undue benefit, which entails actual provision and receipt of the undue benefit, and merely requesting an undue benefit, which entails a desire to receive an undue benefit, but no actual receipt. Additionally, nothing in the wording of art. 10 FCE 2009 or in art. 20(1) FCE 2012 suggests that FIFA intended the expression "accepts" to include both the actual receipt of an undue benefit and a mere request for an undue benefit without any actual corresponding receipt. Consequently, the argument that a person must be considered to have accepted an undue benefit as an inexorable consequence of having requested it is to be rejected.**

3. **Given that art. 5(2) and art. 20(4) FCE 2012 prohibit *attempts* to accept prohibited benefits, whereas no such prohibition was in force under the FCE 2009, the application of the principle of *lex mitior* set forth in art. 3 FCE 2012 results in that neither art. 5(2) or art. 20(4) FCE 2012 can be used in order to establish a violation of art. 20(1) FCE 2012 based upon an *attempt* dating back to 2010 to accept a prohibited benefit.**

4. **A *request* for a particular undue benefit cannot accurately be characterized as an**

attempt **to accept said undue benefit. Where, by requesting an undue benefit, one person does an act which signals an intention to accept one undue benefit if it is subsequently offered some time in the future, an *attempt* to accept an undue benefit necessarily involves an attempted act of acceptance/receipt in the present.**

I. PARTIES

1. Mr. Harold Mayne-Nicholls (the "**Appellant**") is a Chilean national. He was the Chairman of the 2018 and 2022 FIFA World Cup Evaluation Committee (the "**Bid Evaluation Group**"). He is also a former President of the Football Association of Chile.

2. The Fédération Internationale de Football Association ("**FIFA**") is an association under Swiss law. Its registered office is in Zurich, Switzerland. FIFA is the global governing body for the sport of football. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and the evidence adduced at the CAS hearing on 14 June 2017. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Panel refers in the Award only to the submissions and evidence it considers necessary to explain the reasoning for the Panel's decision.

A. Background Facts

a) The Consultancy Agreement between the Appellant and FIFA

4. On 29 March 2010, the Appellant and FIFA entered an *"Agreement (…) regarding the provision of the Services for Bidding 2018/2022 to FIFA"* (the "**Consultancy Agreement**"). Under clause 1.1 of the Consultancy Agreement, the Appellant agreed to *"provide FIFA with advice, assistance and other services"* as listed in an Appendix to the agreement.

5. Appendix A to the Consultancy Agreement was entitled *"The Services"*. Paragraph 1 provided:

> *"The [Appellant] shall implement and monitor the 2018/2022 bidding. This includes in particular:*
>
> - *representing FIFA on the occasion of the inspection visits*
> - *acting as the spokesman of the inspection group*

- *contributing to the inspection and bid evaluation report through event expertise and analysis of the bid book".*

6. Under clause 1.3 of the Consultancy Agreement, the Appellant undertook to *"refrain from providing the services when unable to guarantee impartiality, particularly where a conflict of interests exists"*. Further, *"whenever the [Appellant] finds himself in a situation that might seem to others as if he were impartial* [sic] *he shall immediately inform FIFA"*.

7. Clause 1.4 of the Consultancy Agreement provided that:

> *"The [Appellant] acknowledges and agrees that he shall adhere to the FIFA Code of Ethics, in particular in respect to the clauses regarding bribes, consignments and/or gifts. The [Appellant] shall immediately inform FIFA if he is offered, expressly or tacitly, any such benefit. The [Appellant] must review the code, which can be found on fifa.com"*.

8. Clause 13 of the Consultancy Agreement was entitled *"Anti-Corruption"*. It provided:

> *"The parties acknowledge that giving and taking bribes can lead to criminal proceedings in accordance with art. 4a of the Swiss Federal Law on Unfair Competition and art. 102 of the Swiss Criminal Code"*.

b) The Appellant's official visit to Qatar in September 2010

9. On 14 May 2010, the nations bidding to host the 2018 and 2022 World Cups submitted their official bidding documents to FIFA. Subsequently, between 18 July 2010 and 17 September 2010, the Bid Evaluation Group, chaired by the Appellant, conducted on-site inspection visits to each of the 11 bidding nations.

10. Between 13 and 17 September 2010, the Bid Evaluation Group visited Qatar to conduct a technical inspection visit in respect of Qatar's bid for the 2022 World Cup.

11. On 15 September 2010, the Bid Evaluation Group visited the Aspire Academy for Sports Excellence ("**Aspire**") in Doha, Qatar. During the visit to Aspire the Appellant met Mr. Andreas Bleicher, Aspire's Executive Director for International Football Affairs.

12. Aspire was referenced numerous times in the bid book submitted by Qatar to FIFA in support of its bid to host the 2022 World Cup (the "**Qatar Bid Book**"). To give two representative examples:

    (a) The Qatar Bid Book referred to Aspire's ownership of the stadium where the semi-final of the 2022 World Cup would be played, stating: *"the world-famous Khalifa International Stadium in ASPIRE Zone will undergo an expansion of seating capacity and host one of the semi-final Matches"*. It added: *"Stadium owner: ASPIRE Academy for Sports Excellence"*.

    (b) The Qatar Bid Book also explained that: *"Excellent sports infrastructure and facilities can be found throughout Al-Rayyan, with its full range of stadiums and hosting venues for major competitions including*

the world famous Khalifa International Stadium, as well as state-of-the-art facilities such as ASPIRE Academy for Sports Excellence, one of the world's leading sports institutes housed within the ASPIRE Dome, the biggest indoor sports facility in the world".

13. On the final evening of the Bid Evaluation Group's inspection of Qatar, the Appellant gave a press conference regarding the visit. According to a contemporaneous report, during the press conference the Appellant stated that: *"From an organisational point of view, Qatar has the potential to host an international sports event such as the FIFA World Cup, but it would pose a number of logistical challenges".*

c) The Appellant's email correspondence with Mr. Bleicher in September and October 2010

14. Two days after the Bid Evaluation Group departed Qatar, on 19 September 2010 the Appellant sent an email to Mr. Bleicher with the subject *"THANKS AND QUESTIONS"*. The email stated:

"Dear Andreas,

Was a real pleasure to be at the Academy during our visit to Qatar. Also to play some football and to receive information from your side.

After saying that I would like to ask you two questions:

a) Do you have possibilities to receive at the football level my son Oliver (born in october 1994) who is a forward and my nephew Nicolas (january 1995) who is a goalkeeper, during january and february to evaluate and train them?

b) My brother in law, former Chilean Davis Cup player, has been in Qatar for holidays a couple of times, and he is really interested in having a chance to coach tennis in a professional way in Qatar. May I give him your e-email and inform him about any possibility?

Thanks and best regards,

Harold Mayne-Nicholls".

15. Mr. Bleicher replied by email on the same day. The reply stated:

"Dear Mr. President,

It's been a real honor and pleasure to receive you and the FIFA Delegation in Aspire last week.

We are delighted that you enjoyed your stay on our premises.

It would be an honor for us to host your son and your nephew for a football evaluation and training period in Aspire. February would not be ideal as there are examinations and camps abroad, but January would be possible. You might even think about joining them for a few days, as you could see the AFC Asian Cup going on in January (7 – 29) as well.

Please feel free to provide your brother in law with my contact details.

I could arrange the necessary contacts for him (we as Aspire do not hire the Tennis Coaches ourselves, as the tennis specific training is handled by the Qatar Tennis Federation under a special program).

Regarding the invitation for the Chile U17 National Champion, one option could be from 3rd to 9th of April, 2011. If this would be fine for you in general, I would send you a formal invitation later on.

Best regards,

Andreas".

16. On the same date, the Appellant sent a further email to Mr. Bleicher which said:

"Dear Andreas

Thanks for your answer.

Can you give me more details for my son and nephew. Mainly about the dates, accommodation and training times. And any other aspect you might think will help us to take a final decision.

I already gave your email to my brother-in-law.

Champio U17. That date fix perfect for us. Please send the invitation, including the age for the players.

Thanks and hope to see you again soon,

Harold".

17. On 20 September 2010, Mr. Bleicher sent an email to the Appellant which stated:

"Dear Mr. President,

The accommodation including means could be in our own Aspire dormitory (they could stay together in a double room or in two single rooms; whatever they prefer) and we could cover the related cost. We could put them into the same team and would check the appropriate team after their arrival.

Training times normally are every afternoon and twice in the mornings from Sunday to Thursday. Normally the weekend (Fri and Sat) is off (activities like desert trip, visit to Souq Waqif, Museums, Cinemas, Asian Cup Games (…) could be interesting for the boys).

As I am going on a business trip tonight, coming back next Sunday, I will check the exact dates with our Head Coach and dormitory staff after being back, but it might be around 9th to 28th January, may be one week longer, but I need to check.

I will send you the formal invitation for the Chile U17 Team then.

I got in contact with your brother in law already and will check things for him after my return.

Best regards,

Andreas Bleicher".

18. Later that day, the Appellant sent an email to Mr. Bleicher which said:

"Dear Andreas,

Thanks a lot for your answer.

I will come back to you after talking with my son and nephew.

Besides that I have two other subjects:

a) Invitation in april.

As I have a Club General Assembly next Friday, I would like to announce it. Is possible?

b) Exchange

We have six clubs (Arica, Iquique, Antofagasta – my home town –, Calama, Salvador and Ciopiapo) in the desert zone of the country. I was wondering if you can receive 6 boys (one from each club) from January to April – and for us is the best part of the year, as they are on holiday all January, February and half March – as an exchange activity. We can send two U15, 2 U16 and 2 U17.

If you agree it can be part of a general agreement between Aspire and our Federation.

Please let me know.

Best regards,

Harold".

19. On 23 September 2010, Mr. Bleicher replied to that email from the Appellant. The reply stated:

"Dear Mr. President,

I just received the information that our Teams would not be available during the suggested period of time, unfortunately. Our general schedule for this season is already full as we need to plan ahead of time, especially with the international fixtures. Anyhow normally Teams drop out as they sometimes get other official commitments on short notice, so that there might be a good chance to come, but unfortunately I cannot confirm this today.

As you suggested, I believe, the best way forward might be to work on a general agreement between Aspire/QFA and your esteemed Federation to get a system in place, which would make things official and reliable for the future. The topic of the 6 boys you asked to send from Jan to April should be thought about carefully as well. So far such long visiting periods never happened before. There are several things to consider, e.g. we also travel with our teams, there are examination periods in between, holidays (…) I'd need to talk to our coaches, educational and dormitory staff as well.

Thanks and best regards,

Andreas".

20. On 30 September 2010, the Appellant sent a further email to Mr. Bleicher which stated:

"Dear Andreas,

Please let me know whenever you have news.

I understand that in April there is no invitation, but we can receive a later one.

And about the 6 players, please let me know what do you think will be possible to do.

Best regards,

Harold

PD: And about my son and nephew going in January/February?".

21. Mr. Bleicher replied by email a short while later stating:

"Dear Mr. President,

Thank you very much again for approaching Aspire on the different topics raised by you below.

Considering FIFA's ongoing bidding process for the FIFA World Cups 2018/2022 with the involvement of Qatar 2022, we believe it might be advisable not to follow up on these topics at this point, as this might leave space for incorrect interpretations, even though Aspire is not involved in the bidding process, of course not. But other not/wrongly informed parties might mix things up.

If you would deem useful, we could pick up the discussion after the bid decision in a clean state and also in the context of a cooperation between your esteemed Federation and the QFA. We believe this would be a transparent solution nobody could argue against.

Thank you very much for your understanding.

Best regards,

Andreas Bleicher".

22. On 17 October 2010, the Appellant replied stating:

"Dear Andreas,

I fully agree. Let us wait until 2011. I think that is the best to establish a Long Term agreement.

Best regards,

Harold".

23. On 18 October 2010, Mr. Bleicher forwarded the chain of emails set out above to two senior officials on the Qatar 2022 World Cup Bid Committee (the "**Qatar Bid Committee**"), Sheikh Mohammed bin Hamad Al-Thani and Mr. Hassan Al-Thawadi. The subject line of Mr. Bleicher's email stated: *"Aspire – Harold M-N"*. The body of the message simply stated: *"Fyi Andreas"*.

d) The final bid evaluation report on Qatar's bid

24. Following the visit to Qatar, the Bid Evaluation Group finalised its bid evaluation reports in respect of the bids submitted by Qatar and the other ten bidding nations.

25. On 19 November 2010, the Appellant attended a meeting of the FIFA Executive Committee in Zurich, Switzerland. During the meeting, the Appellant provided a short summary of the inspection tour and the process by which the bid evaluation reports for the various bids were compiled.

26. The bid evaluation report for Qatar contained a short reference to Aspire in a section dealing with the ownership of Stadiums:

"Stadium name: Khalifa International Stadium
[…]
Owner/investors/investment budget: ASPIRE/Government/USD 71m".

27. On 2 December 2010, FIFA's Executive Committee met in Zurich to determine the host nations of the 2018 and 2022 World Cups. The Executive Committee voted to award the right

to host the 2022 World Cup to Qatar. Since he was not a member of the Executive Committee, the Appellant did not participate in the vote.

B. The Proceedings before FIFA

a) Investigation by FIFA Ethics Committee

28. Following extensive and persistent allegations of misconduct relating to the bidding and voting process for the 2018 and 2022 World Cups, the Investigatory Chamber of the FIFA Ethics Committee (the "**Investigatory Chamber**") commenced an investigation into that process.

29. As part of that investigation, on 22 January 2014 the Appellant voluntarily attended a deposition in New York City, at which he answered questions put to him by the Chairman of the Investigatory Chamber, Mr. Michael Garcia. During the course of the interview, the Appellant denied that he had witnessed any improper conduct or inappropriate requests during the bid inspection and awarding process. He added that people in the world of football knew that, *"if you offer me something, I will go immediately to report it"*.

30. Following that interview, the Qatar Bid Committee disclosed copies of various documents, including email exchanges between the Appellant and Mr. Bleicher, to FIFA.

31. On 20 May 2014, the Chairman of the Investigatory Chamber formally requested the Appellant to provide a statement describing all communications between the Appellant and Mr. Bleicher or anyone else affiliated with Aspire between 1 January 2010 and 31 December 2011, together with copies of any such correspondence.

32. The Appellant replied to that request the same day. The Appellant stated that he was unable to provide records of email communications with Mr. Bleicher in 2010 and 2011, in part because he was no longer able to access all of the email accounts he used during that period. The Appellant stated that he *"remember[ed] exchanging emails with him, asking for the possibility that Chilean youth football players could go to the Aspire Academy on an exchange program. This was never possible as I never received an answer"*. He added that, *"I remember that I also asked if one member of another sport (do not remember which one) from Chile could go. Never received an answer"*. In his response, the Appellant did not mention the requests he had made relating to Mr. Bleicher relating to the Appellant's son, nephew and brother-in-law.

33. On 5 September 2014, a report produced by the Investigation Chamber was transmitted to the Chairman of the Adjudicatory Chamber of the FIFA Ethics Committee (the "**Adjudicatory Chamber**").

34. On 30 October 2014, FIFA wrote to the Appellant stating that based on a preliminary investigation concerning the 2018/2022 FIFA World Cup bidding process, the Chairman of the Investigatory Chamber had determined the existence of a *prima facie* case that the Appellant had committed violations of the FIFA Code of Ethics ("**FCE**").

35. On 12 November 2014, the Appellant was provided with a summary of the alleged violations together with a list of questions.

36. On 18 March 2015, the FIFA Ethics Committee informed the Appellant that the investigation had concluded. The letter stated that the Investigatory Chamber had prepared a final report that would be referred to the Adjudicatory Chamber for its consideration.

37. On 27 March 2015, the Deputy Secretary of the Adjudicatory Chamber informed the Appellant that the Chairman of the Adjudicatory Chamber had examined the report of the Investigatory Chamber and had decided to proceed with adjudicatory proceedings against the Appellant.

38. On 3 July 2015, the Appellant gave oral evidence at a hearing before the Adjudicatory Chamber.

b) Decision of the Adjudicatory Chamber

39. On 6 July 2015, the Appellant was notified of the decision of the Adjudicatory Chamber. In summary:

    (a) The Appellant was found to have violated Article 13 (General rules of conduct), Article 15 (Loyalty), Article 19 (Conflicts of interest) and Article 20 (Offering and accepting gifts and other benefits) of the FIFA Code of Ethics 2012 (the "**FCE 2012**").

    (b) The Appellant was banned from participating in any football-related activity at national or international level for a period of seven years from 6 July 2015.

    (c) The Appellant was ordered to pay costs of CHF 20,000.

40. On 8 July 2015, the Appellant wrote to the Adjudicatory Chamber asking to be provided with the grounds of its decision.

41. More than six months later, on 14 January 2016 the Adjudicatory Chamber provided the Appellant with the grounds of its decision.

1. Temporal application of the FCE

42. Before addressing the alleged violations, the Adjudicatory Chamber explained that, *"the actions and events which led to the investigation proceedings and, eventually, to the present adjudicatory proceedings, have occurred, in part, before the currently applicable edition of the FCE entered into force"*. The Adjudicatory Chamber went on to note that the Appellant was *"charged with violations of different FCE provisions relating to different periods of time"*. In particular, in respect of actions and events that occurred in September/October 2010, the Appellant was charged with violations of Articles 13, 15, 19 and 20 FCE 2012.

2. Violation of Article 20 FCE (Offering and accepting gifts and other benefits)

43. In relation to the alleged violation of Article 20 of the FCE 2012, the Adjudicatory Chamber explained that:

(a) The Appellant did not actually obtain a gift or benefit following his requests to Mr. Bleicher. Although Mr. Bleicher initially appeared to be willing to comply with the Appellant's requests, there was no evidence that the Appellant's son, nephew or brother-in-law were ever actually accommodated and/or trained by Aspire.

(b) As a result, the conditions set out in Article 20(1) were not met. Nevertheless, under Article 5(2) of the FCE 2012 any *attempt* to obtain such a benefit is also prohibited. It was therefore necessary to consider whether the other elements of Article 20(1) were met in this case, in order to determine whether a violation had occurred.

(c) The first two conditions of Article 20(1) are that (i) the person alleged to have committed the violation must be bound by the FCE; and (ii) the counterpart must be a person within or outside FIFA, an intermediary or a related party as defined by the FCE. Both of these conditions were met in the present case.

(d) The next condition is that a *"gift or other benefit"* must be at stake. The term *"benefit"* includes *"any kind of betterment or advancement of economic, legal or personal, material or non-material interest"*. However, not every kind of benefit falls within Article 20(1), which only applies to *"undue"* benefits. Accordingly, the benefit sought *"must be 'undue' in the light of the provisions of the FIFA regulations or universally accepted legal norms"*. In this regard, the Adjudicatory Chamber noted that the benefits that the Appellant had sought *"were clearly not in line with FIFA's regulatory framework"* since *"the requests as well as Dr. Bleicher's response to them were suited to interfere with the accused's duty to objective and neutrally assess the World Cup bids"*. As a result, the benefits sought by the Appellant were undue.

44. In reaching these conclusions, the Adjudicatory Chamber rejected the Appellant's argument that there was no connection between Aspire and the Qatar Bid Committee. On the contrary, the documentary record showed that, *"a clear connection (…) can be deduced"* between the two entities. The Adjudicatory Chamber also rejected the Appellant's argument that even if there was such a connection, the Appellant was unaware of it because Mr. Bleicher had assured him several times that Aspire was not involved in the bidding process and the Appellant had no reason to doubt that question. The Adjudicatory Chamber observed that the fact that the Bid Evaluation Group had visited Aspire as part of a three-day bid inspection excluded any possibility that the Appellant was unaware of the link. The Appellant was not entitled simply to rely on Mr. Bleicher's assertions without seeking further verification (for example, by confirming the position with officials on the Qatar Bid Committee).

45. The Adjudicatory Chamber went on to state that in view of the timing of the Appellant's requests to Mr. Bleicher and the office that the Appellant held at the time, *"it is more than evident that the requests were improper and put the addressee in an extremely difficult position"*. The Adjudicatory Chamber *"stresse[d] firmly that this cannot have escaped the attention of the [Appellant]"*. In this respect,

"the [Appellant's] constant denying of having been aware of the relationship between Aspire and the Qatar 2022 World Cup bid is unsubstantiated and his purported ignorance with regard to the impropriety of his requests sheds an unfortunate light on his behaviour during the bidding process".

46. The Adjudicatory Chamber went on to hold that it was *"quite evident"* that the benefits sought were neither of symbolic nor trivial value. The provision of accommodation and training of two persons for several weeks *"doubtless entails considerable costs"*. Moreover, it could not be ruled out that the benefits would have been capable of influencing the Appellant in the execution or omission of an act relating to his official duties. As a result, it followed that the benefits sought by the Appellant were prohibited under Article 20(1) of the FCE 2012.

47. In this connection, the Adjudicatory Chamber noted that Article 20(1) (unlike Article 21) does not require that a benefit be offered or accepted in order to obtain or retain any improper advantage. The mere fact that a benefit is obtained or sought is sufficient to give rise to a violation of Article 20(1). In these circumstances, the Adjudicatory Chamber therefore concluded that the Appellant had breached Article 20(1) read with Article 5(2) of the FCE 2012.

3. Violation of Article 19 FCE (Conflicts of interest)

48. The Adjudicatory Chamber began its consideration of Article 19 by noting that as the Chairman of the Bid Evaluation Group, the Appellant's duty was to conduct objective and neutral evaluations of the bids for the 2018 and 2022 FIFA World Cups. The Adjudicatory Chamber explained that it was not in a position to assess the Bid Evaluation Group's final evaluation reports and there was no evidence in the record that the evaluation and report on the Qatari bid was *actually* influenced by any of the Appellant's requests. Nevertheless, in order for a conflict of interest to arise, it is sufficient that a person *appears* to have private or personal interests that detract from his ability to perform his duties.

49. The Adjudicatory Chamber observed that at the time when the Appellant communicated the various requests to Mr. Bleicher, the Appellant was still engaged with evaluating the bids and with drafting the final evaluation reports. By making requests of a purely private and personal nature to an entity linked with one of the bidders while the bids were still under evaluation, the Appellant *"gave the appearance that private interests may influence the performance of his duties, namely the outcome of the report"*. Similarly, the Appellant's actions gave Mr. Bleicher the impression that favourable treatment of the Appellant's requests might have a positive influence on the outcome of the final evaluation report on the Qatar 2022 bid.

50. The salient question was *"whether it was possible that the requests – or Dr. Bleicher's response to them, respectively – had an influence on the outcome of the evaluation report on the bid the addressee was affiliated with"*. Since the requests were made before the Bid Evaluation Group had finished its work, the Adjudicatory Chamber held that the Appellant had, or appeared to have, a conflict of interest. As a consequence, the FCE placed the Appellant under a duty either to recuse himself from the evaluation of the Qatari bid, or alternatively not to make the requests in the first place. In any event, the Appellant was obligated under Article 19(3) of the FCE 2012 to report the situation to FIFA.

4. Violation of Article 15 FCE (Loyalty)

51. The Adjudicatory Chamber explained that the fiduciary duty established under Article 15 FCE *"requires the persons bound by the FCE to comply with the highest standards of care and behaviour including primarily a duty of loyalty. This means generally and in all relevant areas of law doing everything that – in this specific case – helps FIFA, on the one hand, and refraining from anything that could damage FIFA, on the other hand"*. In particular, persons bound by the FCE *"must share and represent FIFA's values while performing their duties and not act in any manner that is adverse to the interests and values of FIFA"*.

52. The Adjudicatory Chamber held that the Appellant's actions, which violated Articles 20 and 19 FCE, *"disregarded FIFA's core values"* and *"call[ed] into question FIFA's integrity"* thereby *"potentially creating a negative image of FIFA in the public"*. In these circumstances, the Adjudicatory Chamber concluded that the Appellant had violated Article 15 of the FCE 2012.

5. Violation of Article 13 FCE (General rules of conduct)

53. The Adjudicatory Chamber stated that since the Appellant had violated Articles 15, 19 and 20 of the FCE he *"has not respected FIFA's regulatory framework"* and had therefore violated Article 13(2) of the FCE 2012. Furthermore, by making impermissible personal requests while acting as Chairman of the Bid Evaluation Group, the Appellant unlawfully exercised the powers accorded to him by FIFA. This constituted a violation of Article 13(4) of the FCE 2012.

54. Lastly, the violations of Article 13(2) and (4) led the Adjudicatory Chamber to conclude that the Appellant had not been aware (at least not to the necessary extent) of the importance of his duties and concomitant obligations. He had therefore also violated Article 13(1) FCE of the FCE 2012.

6. Violation of Articles 18 and 42 FCE (Duty of cooperation)

55. After reviewing the evidence, the Adjudicatory Chamber held that the Appellant had not committed a violation of the duty to cooperate under either Article 18 and/or Article 42 of the FCE 2012.

7. Sanction for FCE violations

56. Having found that the Appellant committed violations of Articles 13, 15, 19 and 20 of the FCE 2012, the Adjudicatory Chamber then turned to consider what sanction should be imposed in respect of those violations.

57. The Adjudicatory Chamber began its consideration of this issue by noting that FIFA was entitled *"to take a tough stance against violations of Article 20"*, since violations of this provision imperil the trust in FIFA's objectivity and integrity. In this regard, the Adjudicatory Chamber noted that:

(a) The Appellant had initiated the relevant correspondence with Mr. Bleicher, rather than the other way round. Moreover, the Appellant continued to pursue requests for benefits *"despite Dr. Bleicher's apparent and increasing uneasiness"*.

(b) This was not a case of negligence but rather *"a deliberate attempt by the [Appellant] to gain personal benefits"*. The Appellant's actions were *"exclusively"* motivated by the prospect of *"gaining personal benefits"*. As a result, the Appellant *"entirely ignored FIFA's interests as well as his duties as a high-ranking FIFA official in order to pursue his own personal interests"*.

(c) The circumstances of the violation were *"particularly aggravating"*. In particular, the Appellant's requests to Mr. Bleicher were *"of an entirely private nature"* and *"the timing chosen by the [Appellant] is particularly reprehensible, as the requests were made only a few days after the visit to Doha and still during the time the Group the [Appellant] was Chairman of was exercising its duties"*.

(d) The Bid Evaluation Group *"had considerable influence on the outcome of the 2018 and 2022 World Cup bids"*. Given the World Cup's status as FIFA's flagship competition, *"the Group in general and the accused in particular were expected to act with complete neutrality and objectivity. Confidence in their work was crucial for them to act with complete neutrality and objectivity"*. The Appellant had been appointed as Chairman of the Bid Evaluation Group because of his *"excellent reputation"* at the time and had repeatedly emphasised his commitment to the highest ethical standards. The fact that he committed these serious breaches of the FCE was therefore *"a particularly aggravating circumstance"*.

(e) In relation to the Appellant's cooperation with the FIFA Ethics Committee, the Adjudicatory Chamber noted that, *"the facts of the present case (…) were established almost entirely by the emails produced by the Qatar 2022 Bid Committee and not by the assistance of the [Appellant]"*. On the contrary, the Appellant did not provide *"any significant evidence or information on the facts of the case"*. On the other hand, the Appellant had not been found to have violated the cooperation provisions in the FCE and had complied with the Investigatory Chamber's requests for written answers in a timely fashion and to the best of his knowledge. As a result, the Appellant's assistance and cooperation were neither an aggravating nor a mitigating factor.

58. In relation to mitigation, the Adjudicatory Chamber noted that:

(a) The Appellant had *"an unblemished record"* and had never been subject to any criminal or ethics proceedings of any kind.

(b) At the hearing before the Adjudicatory Chamber, the Appellant repeatedly stated that he had made a mistake and was sorry for this. However, the expression of regret was not an acknowledgment he had done anything wrong, but merely that he regretted that he had not made *"crystal clear"* in his correspondence with Mr. Bleicher that he intended to pay for the costs of the accommodation of his son and nephew. Accordingly, the Adjudicatory Chamber concluded that the Appellant had not shown any regret or

remorse and had not demonstrated any awareness of his wrongdoing. As a result, these circumstances did not lead to a mitigation of guilt.

59. In light of these considerations, the Adjudicatory Chamber concluded that the Appellant's guilt was *"serious"* and there were *"very few"* mitigating factors. In the Adjudicatory Chamber's opinion, a warning, reprimand or fine would be an *"inappropriately mild"* punishment for the violations found to have been committed. Instead, a ban on taking part in any football-related activity was an appropriate sanction. In all the circumstances, the Adjudicatory Chamber considered that a five-year worldwide ban was an appropriate and proportionate sanction for the violation of Article 20 of the FCE 2012.

60. Having dealt with the penalty for the violation of Article 20, the Adjudicatory Chamber went on to consider the appropriate sanction in respect of the violations of Articles 13, 15 and 19 of the FCE 2012. The Adjudicatory Chamber stated that while the violation of Article 20 was the most serious breach of the FCE, the infringements of Articles 13, 15 and 19 were not insignificant or negligible. In contrast to Article 20, those violations did not consist of an attempt to engage in prohibited conduct; rather, they were substantive violations. In all the circumstances, the Adjudicatory Chamber therefore decided to increase the ban on participating in any football-related activity by an additional two years to reflect the violations of Articles 13, 15 and 19.

61. Accordingly, the Adjudicatory Chamber imposed an overall ban of seven years on the Appellant from 6 July 2015.

c) Decision of the FIFA Appeal Committee

62. On 15 January 2016, the Appellant notified the FIFA Appeal Committee (the "**Appeal Committee**") that he intended to file an appeal under Article 80(1) of the FCE 2012. On 25 January 2016, the Appellant submitted his petition and grounds for appeal to the Appeal Committee.

63. On 7 April 2016, a hearing took place before the Appeal Committee. The Appellant attended the hearing with a legal representative.

64. On 22 April 2016, the Appeal Committee notified the Appellant that he had been convicted of violations of Articles 13, 15, 19 and 20 of the FCE 2012, but that the Appeal Committee had decided to reduce the length of the ban on participating in football-related activities from seven years to three years.

65. On 8 February 2017, the Appeal Committee communicated the grounds of its decision to the Appellant.

1. Applicable version of the FCE

66. Before the Appeal Committee the Appellant had argued that the Adjudicatory Chamber had applied the wrong edition of the FCE. In particular (a) it *"wrongly applied the 2009* [sic] *edition of the FCE"* to acts that took place in September/October 2010, and (b) in order to find a breach of Article 20 FCE, the Adjudicatory Chamber wrongly applied the 2012 version of the FCE, which differs fundamentally from the 2009 edition.

67. The Appeal Committee rejected this argument. The Appeal Committee stated that it was well established that that by adopting the new wording of Article 20 of the FCE 2012, *"the provision's scope of application was not materially amended but merely rendered more precisely"*. Accordingly, *"since the accepting and giving of gifts and other benefits already contravened the 2009 edition of the Code, art. 3 of the FCE leads to the applicability of the 2012 edition of the Code to the present case"*. The Appeal Committee added that Article 20 of the FCE 2012 *"is not more severe than article 10 of the FCE (ed. 2009)"*. Article 20 of the FCE 2012 was therefore applicable to the Appellant's conduct in this case.

68. The Appeal Committee went on to state that the Adjudicatory Chamber had correctly determined that since the FCE applicable at the time was the 2009 edition, and since that edition did not contain any provision that corresponded to Article 20(4) of the 2012 edition, charges relating to Article 20(4) should not be considered.

2. Violation of Article 20 FCE (Offering and accepting gifts and other benefits)

69. The Appeal Committee began its consideration of Article 20 by noting that, *"the wording of art. 20 of the FCE is of high relevance, since it stipulates the circumstances under which persons bound by the FCE may offer or accept gifts or other benefits to and from persons within or outside FIFA"*.

70. The Appeal Committee noted that there were *"no indications that either the accused's son or nephew or his brother-in-law were actually accommodated and/or trained by Aspire"*. Nevertheless, the Appellant had made *"a clear request"* for the benefit of training and accommodation of his son and nephew at Aspire's expense. That request was initially accommodated, and was only later refuted by Mr. Bleicher. At no point did the Appellant reject Mr. Bleicher's offer for Aspire to meet the relevant costs.

71. In the Appeal Committee's view, it was *"clear"* that *"the initial request presented by the Appellant was welcomed and as such the relevant benefit accepted. The benefits promised to the appellant in the circumstances presently relevant do clearly constitute benefits within the meaning of art. 20 of the FCE (and art. 10 of the FCE ed. 2009)"*.

72. The Appeal Committee went on to address the Appellant's submission that he did not commit a violation since he had not actually received any benefits. The Appeal Committee stated that in order for a violation of Article 20 to occur, it is not necessary for the advantages in question to actually be received by the addressee. Rather, *"it is sufficient that the relevant official requests an inappropriate benefit within the meaning of this provision. Such a request inherently and inevitably carries an in-*

advance acceptance of the benefit that is sought and is therefore also covered by the prohibition of art. 20 FCE to accept such benefits".

73. The Appeal Committee added that in view of the timing of the requests to Mr. Bleicher and the Appellant's role as the Chairman of the Bid Evaluation Group, *"it is more than evident that the requests were improper and put the addressee, Mr Bleicher, in an extremely difficult position"*. In this respect, in light of the established facts and circumstances, it was irrelevant whether Mr. Bleicher had provided inconsistent or conflicting witness testimony.

74. The Appeal Committee agreed with the Adjudicatory Chamber that the benefits requested by the Appellant *"were clearly not in line with FIFA's regulatory framework"* and *"were suited to interfere with the [Appellant's] duty to objectively and neutrally assess the World Cup bids"*. The Appeal Committee also agreed with the Adjudicatory Chamber that it was not in a position to assess the final evaluation and reports of the Bid Evaluation Group. Nevertheless, it concluded that *"it cannot be ruled out that the benefits sought would have, at least been suited to influence the execution or omission of an act related to the official activities"* of the Appellant.

75. For these reasons, the Appeal Committee upheld the Adjudicatory Chamber's finding that the Appellant had committed a violation of Article 20 of the FCE 2012.

3. Violation of Article 19 (Conflict of interest)

76. The Appellant argued that he had not violated Article 19 FCE since there was no appearance of impropriety. The Appeal Committee rejected this argument. It observed that the Appellant had made the requests to Mr. Bleicher during a time when he was occupied with evaluating the various World Cup bids and drafting the final evaluation reports. It added that, *"a clear connection between the Aspire Academy and the Qatar 2022 Bid Committee can be deduced, at least, from the record of the Qatar 2022 Bid Book, which even includes a one page picture of Mr Bleicher"*. Therefore, the Appellant *"was well aware"* of Mr. Bleicher's link with the Qatar Bid Committee.

77. Accordingly, the private or personal interests involved did create a situation that could lead to conflicts of interest since *"there is an appearance that the appellant could be detracted from performing his duties as Chairman of the FIFA Bid Evaluation Group with integrity in an independent and purposeful manner"*. Further, as the Adjudicatory Chamber noted, the critical question is whether it was *"possible"* that the Appellant's requests had an influence on the outcome of the bid evaluation report. In this respect, *"The timing of said requests was therefore determinative as to the violation of a conflict of interest. As the requests were made before the final evaluation report, the Appellant must be held, to have been, or at least appeared to have been, in a conflict of interest (…). [B]y making such requests, the appellant might give at least the impression that favourable treatment of the requests could lead to have* [sic] *a positive influence on the final evaluation report of the Qatar 2022 bid"*.

78. The Appeal Committee went on to stress that the timing of the requests was *"highly significant in establishing a breach of a conflict of interest"*. Moreover, the Appellant had been under an obligation to report the situation to FIFA, which he failed to do, contrary to Article 19(3). Against that

background, the Appeal Committee concluded that the Appellant had violated Article 19 of the FCE 2012.

4. Violation of Article 15 FCE (Loyalty)

79. The Appeal Committee upheld the Adjudicatory Chamber's finding that the Appellant had violated Article 15 of the FCE 2012. The Appeal Committee concluded that the Appellant had *"disregarded FIFA's core values, thus calling into question FIFA's integrity and potentially creating a negative image of FIFA in the public"*.

80. The Appeal Committee went on to find, however, that since Articles 19 and 20 FCE already provided for an element of loyalty and allegiance towards FIFA, and since it had already been established that the Appellant breached those articles of the FCE, it followed that the Appellant's breach of Article 15 *"should play no role in the assessment of a sanction"*.

5. Violation of Article 13 FCE (General rules of conduct)

81. The Appellant submitted that the Adjudicatory Chamber's findings in relation to Article 13 of the FCE 2012 should be revoked since they were entirely derivative of other FCE violations and no separate freestanding violation of Article 13 occurred. The Appeal Committee rejected this argument. It stated that the Appellant's actions *"at least reflected a failure from the Appellant to act in awareness of his duties and obligations and ultimately led to a breach of the applicable laws and regulations"* which *"called into question his credibility and integrity"*. The Appeal Committee therefore concluded that the Appellant had violated Article 13; however, for the same reasons as applied in relation to the violation of Article 15, the Appeal Committee considered that the breach of Article 13 should not be the subject of a separate sanction.

6. Sanction for FCE violations

82. In considering the appropriate sanction for the Appellant's breaches of the FCE, the Appeal Committee observed that:

(a) The Appellant's *"unblemished record"* and *"his years rendered to FIFA and football in general over the years as the former President of the Chilean Football Federation"* was a mitigating factor.

(b) In addition, the Appeal Committee disagreed with the Adjudicatory Chamber's interpretation of the Appellant's expressions of regret. Contrary to the view of the Adjudicatory Chamber, the Appeal Committee considered that, *"the appellant did demonstrate remorse in showing awareness of wrongdoing in front of the Committee and by stressing that this big mistake has changed his life considerably. As a consequence, these circumstances lead to a mitigation of the [Appellant's] guilt"*.

(c) However, the Appeal Committee rejected the Appellant's argument that the fact no benefit was ultimately received constituted a mitigating factor. It explained that the reason why the requests were not implemented was because Mr. Bleicher had

reconsidered the matter. The non-fulfilment of the requests *"was not due to the will of the Appellant"* who *"simply accepted the indications of Mr Bleicher"*.

(d) The Appeal Committee also rejected the Appellant's argument that a further mitigating factor arose from the fact that he had discharged his responsibilities as the Chairman of the Bid Evaluation Group in a neutral manner. The Appeal Committee noted that Appellant's primary duty was to conduct objective and neutral assessments of the bids submitted for the 2018 and 2022 World Cups. Mere compliance with that duty could not constitute a mitigating factor.

83. The Appeal Committee stated that the Appellant had been wrongly sanctioned for a violation of Articles 13 and 15, which should not have been treated as freestanding violations. In light of this, and in view of the mitigating factors summarised above, the Appeal Committee decided: (a) to reduce the ban imposed in respect of the violation of Article 20 FCE from five years to two years; (b) to increase the ban imposed in respect of the violation of Article 19 FCE to one year; and (c) to impose no separate penalty in respect of the violation of Articles 13 and 15.

84. Accordingly, the Appeal Committee determined that the Appellant should be banned from participating in any football-related activity at national or international level for a total period of three years. In addition, the Appellant was ordered to pay CHF 20,000 to FIFA in respect of the costs of the proceedings before the Adjudicatory Chamber.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

85. On 27 February 2017, the Appellant filed his Statement of Appeal and Appeal Brief with the CAS Court Office. In his Statement of Appeal, the Appellant requested a stay of the appealed decision pursuant to Article R37 of the CAS Code. The Appellant also nominated Mr. Bernard Hanotiau as an arbitrator in this matter.

86. On 13 March 2017, FIFA filed its response to the Appellant's application for a stay. On the same date, FIFA nominated Prof. Luigi Fumagalli as an arbitrator in this matter.

87. On 27 March 2017, the President of the CAS Appeals Arbitration Division rendered an Order on the Request for a Stay, which rejected the Appellant's application for a stay. The President found that the Appellant had not evidenced any irreparable harm and therefore the first of the criteria for granting a stay of the decision under appeal was not made out.

88. On 29 March 2017, FIFA filed its Answer.

89. On 12 April 2017, the CAS Court Office notified the parties that the Panel appointed to hear the appeal would be constituted as follows:

President:	Prof. Martin Schimke, professor and attorney-at-law in Dusseldorf, Germany
Arbitrators:	Mr. Bernard Hanotiau, attorney-at-law in Brussels, Belgium
	Prof. Luigi Fumagalli, professor and attorney-at-law in Milan, Italy

90. On 15 May 2017, the Appellant signed the Order of Procedure.

91. On 19 May 2017, FIFA signed the Order of Procedure.

92. On 14 June 2017, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

93. The Panel was assisted at the hearing by Mr. William Sternheimer (Deputy Secretary General of the CAS) and Mr. Edward Craven (Ad hoc clerk).

94. In addition, the following persons attended the hearing:

- Mr. Harold Mayne-Nicholls (Appellant)
- Mr. Juan de Dios Crespo Pérez (Counsel for the Appellant)
- Mr. Paolo Torchetti (Counsel for the Appellant)

- Mr. Antonio Rigozzi (Counsel for FIFA)
- Mr. William McAuliffe (Counsel for FIFA)

95. In his Appeal Brief the Appellant advanced a detailed request for an order requiring FIFA to provide the Appellant with copies of: (a) the complete and un-redacted *Report of the Inquiry into the 2018/2022 FIFA World Cup Bidding Process* produced by Mr. Michael Garcia (the "**Report**"); and (b) un-redacted transcripts of Mr. Bleicher's interviews with the Investigatory Chamber. At the hearing before the Panel, the Appellant maintained these requests, although the request in relation to (a) was reduced to the portions of the Report that specifically refer to the Appellant. The Appellant submitted that production of these documents would enable him to identify any further exculpatory evidence and to test Mr. Bleicher's credibility. FIFA objected to the document production request on the basis that it was an unjustified fishing expedition which would serve no legitimate purpose. The Panel indicated that it would address this request in its Award.

IV. THE POSITION OF THE PARTIES

A. The requests for relief

96. In its Statement of Appeal the Appellant requested the Panel to grant the following relief:

> *"(1) To accept this appeal against the Decision rendered by the FIFA AC.*
>
> *(2) To adopt a preliminary award as soon as possible:*
>
> *a. granting the provisional measure of a stay of execution of the application of the sanction issued in the Decision pending the final outcome of this matter further to R37 of the CAS Code;*

b. to provide the Appellant with the following evidence and documents further to R44.3 of the CAS Code and article 39 of the FCE:

i. the complete and un-redacted "Report on the Inquiry into the 2018/2022 FIFA World Cup Bidding Process" of the 5 September, 2014;

ii. the entire un-redacted transcript of the interview with Mr. Bleicher;

(3) To adopt an award annulling the Decision of the FIFA AC, eliminating the sanctions against the Appellant on the basis that:

a. FIFA has violated the principle of nulla poena sine legge praevia; and/or

b. the Appellant has not violated the FIFA Code of Ethics;

(4) In the alternative, if it is found that there is a violation, that the Appellant receive a warning and/or a reprimand.

(5) In the further alternative, that the Appellant receives a prohibition from participating in football-related activities for a maximum of 1 year.

(6) In any event, the Appellant requests that the Panel issue an award where:

a. the Appellant is relieved of paying all amounts payable to FIFA, including but not limited to the amount of 20,000 CHF already requested by the FIFA AC;

b. the Respondent FIFA covers the entire cost of the proceedings and arbitration; and

c. the Respondent FIFA pays the legal fees and costs of the previous hearing in the amount of 30,000 CHF".

97. In its Answer to the Appeal the Respondent requested the Panel to grant the following relief:

"issue an award

1. Dismissing Mr. Mayne-Nicholls' prayers for relief.

2. Confirming the Decision under appeal.

3. Ordering Mr. Mayne-Nicholls to pay a significant contribution towards the legal fees and other expenses incurred by FIFA in connection with these proceedings".

B. The issues in the appeal

98. As a result of the Parties' prayers and submissions, the issues that arise for determination by the Panel in this appeal may be summarised as follows:

(a) Issue 1: Should the decision of the Appeal Committee be annulled on the basis that it violated the doctrine of *nulla poena sine legge praevia*?

(b) Issue 2: Alternatively, should the decision of the Appeal Committee be annulled on the basis that FIFA has failed to discharge the burden of proving that the Appellant violated the relevant provisions of the FCE?

(c) Issue 3: If the decision of the Appeal Committee is not annulled, should the prohibition on participating in football-related activities for three years be replaced with a warning, reprimand or shorter prohibition?

C. Submissions of the Parties

99. The parties' submissions regarding the issues in the appeal, in essence, may be summarized as follows. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

a) Preliminary issue: Burden and standard of proof

1. The Appellant's submissions

100. The Appellant submits that FIFA bears the burden of establishing the existence of violations of the FCE. In relation to the standard of proof, the Appellant states that the standard of *"personal convictions"* in Article 51 of the FCE 2012 is analogous to the standard of *"comfortable satisfaction"* under the jurisprudence of the CAS. In CAS 2013/A/3323 the Panel explained that, under this standard of proof, *"the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond reasonable doubt""* (para 71).

2. FIFA's submissions

101. FIFA submits that, as an association incorporated in Switzerland, it is entitled to establish its own rules regarding the burden and standard of proof applicable to its internal disciplinary proceedings. Article 8 of the Swiss Civil Code ("**SCC**") provides that any party who claims a right on the basis of an alleged bears the burden of proving that fact. Further, under Article 52 of the FCE 2012 the burden of proof regarding alleged breaches of the FCE lies with FIFA.

102. Accordingly, FIFA states that under Article 8 SCC and Article 52 of the FCE 2012, FIFA bears the burden of proving any breaches of the FCE, while the Appellant has the burden of establishing any factual defences that exclude or mitigate any breach of the FCE.

b) Issue 1: Should the decision of the Appeal Committee be annulled on the basis that it violated the doctrine of nulla poena sine legge praevia?

1. The Appellant's submissions

103. The Appellant submits that the Adjudicatory Chamber and the Appeal Committee wrongly applied the provisions of the FCE 2012 to events that occurred in 2010. He contends that the retrospective application of the FCE 2012 in this manner violated the principle of *nulla poena sine legge praevia*.

104. The Appellant submits that there are important substantive differences between the provisions of the FCE 2009 and the FCE 2012. The Appellant notes in particular that:

(a) In contrast to Article 20 of the FCE 2012, Article 10 of the FCE 2009 did not contain any reference to mere *"offer[s]"* of gifts/benefits. Under the FCE 2009, a violation was only committed if a gift/benefit was actually accepted; however, this is no longer the case under the substantially wider terms of Article 20 of the FCE 2012.

(b) Article 20 of the FCE 2012 prohibits offering or receiving any gift/benefit that creates a conflict of interest. However, there is no comparable "conflict of interest" provision in Article 10 of the FCE 2009, which again is narrower than Article 20 of the FCE 2012.

(c) Article 5(2) of the FCE 2012 provides that an *"attempted act"* may give rise to a breach of the FCE. There is no comparable provision relating to attempted acts in the FCE 2009. This is a further significant difference in the scope of liability between the 2009 and 2012 versions of the FCE.

105. The Appellant submits that the Appeal Chamber's decision arbitrarily picked and chose from various provisions of both the FCE 2009 and the FCE 2012 in order to achieve an outcome that it deemed just. The Appellant submits that the reasoning of the Appeal Committee in this respect is *"contradictory"*, *"preposterous"*, *"intellectually dishonest"* and *"circular to the point that it renders the Decision entirely unintelligible"*.

106. The Appellant contends that the Appeal Chamber failed to address the Appellant's argument that the FCE 2012 made substantive additions and changes to the FCE 2009. He submits that the Appeal Chamber was wrong to suggest that the FCE 2012 did not materially amend the scope of the relevant provisions but *"merely rendered [it] more precisely"*. On the contrary, he contends the relevant changes were significant and substantive.

107. The Appellant submits that the Appeal Chamber was wrong to conclude that, since the accepting and giving of gifts and benefits already contravened the FCE 2009, by virtue of Article

3 of the FCE 2012 the later Code was therefore applicable to the Appellant's conduct in 2010. In particular, the Appellant submits that:

(a) It is not the case that *"accepting and giving gifts"* are treated equally under the FCE 2009 and the FCE 2012. Under the FCE 2009, a breach only occurred where a gift/benefit was actually accepted; a mere *"offer"* was insufficient. In contrast, under the FCE 2012 there is an express prohibition on *"offer[ing]"* gifts/benefits as well as the express prohibition on receiving and giving them.

(b) Secondly, the prohibition in Article 20 of the FCE 2012 is more severe than the prohibition under Article 10 of the FCE 2009. This is because Article 5(2) of the FCE 2012 substantially changes the conditions for liability by extending the prohibition to include *attempts* to obtain gifts and benefits.

108. The Appellant contends that the Appeal Committee's finding that the Appellant violated Article 20 FCE should be overruled on this basis. Further, the Appellant submits that because the Appeal Committee's findings that he violated Articles 13, 15 and 19 of the FCE 2012 should similarly be set aside on the basis that those conclusions also contravened the principle of *nulla poena sine legge praevia*.

2. FIFA's submissions

109. FIFA rejects the Appellant's arguments concerning the retrospective application of the FCE 2012. In relation to the argument that Article 10 of the FCE 2009 is *"completely different"* to Article 20 of the FCE 2012, FIFA submits that:

(a) With the exception of Article 20(4) (which did not exist in the FCE 2009) there is no appreciable difference between the two provisions in the context of the present case.

(b) The argument that Article 10 of the FCE 2009 did not prohibit the offering of gifts is a self-serving and excessively restrictive interpretation of that provision. In any event, the argument is irrelevant since the basis of the alleged violation of Article 20 of the FCE 2012 was not that the Appellant *offered* a gift/benefit, but that he *solicited and accepted* it.

(c) The Appellant is wrong to argue that he did not accept or receive a gift/benefit from Mr. Bleicher. The Appellant accepted the gift/benefit when he was offered it in response to his own request. The fact that the gift/benefit was not ultimately delivered is irrelevant, since Article 10 of the FCE 2009 did not contain any requirement that a gift must actually be received in order for a violation to occur.

110. In relation to the argument that Article 5(2) of the FCE 2012 fundamentally changed the nature and scope of the prohibition by expanding liability to include an *"attempted act"*, FIFA submits that the existence of the new wording in Article 5(2) was not determinative of the existence of a violation of Article 20. The Appellant was found guilty of a violation of Article 20 because he requested and accepted a benefit from Mr. Bleicher, not because he *"attempted"* to secure a

gift/benefit for the purposes of Article 5(2). In this regard, FIFA notes that the Appeal Committee did not even refer to Article 5(2) in its decision. It is therefore irrelevant to the argument that the Appeal Committee violated the principle of *nulla poena sine legge praevia* in its decision.

c) Issue 2: Should the decision of the Appeal Committee be annulled on the basis that FIFA has failed to discharge the burden of proving that the Appellant violated the relevant provisions of the FCE?

1. The Appellant's position

aa) Article 20 (Offering and accepting gifts and other benefits)

111. The Appellant submits that FIFA has not discharged its burden of establishing that he breached Article 20 of the FCE 2012. On the contrary, the Appellant submits that the Appellant and the Bid Evaluation Group for the 2018 and 2022 World Cups discharged their duties and performed their functions as they were supposed to, without committing any violations of the FCE 2012.

112. The Appellant submits that FIFA has failed to discharge the burden of establishing a violation of Article 20 of the FCE 2012 in two significant respects. First, the Appellant submits that the evidence of Mr. Bleicher is completely unreliable and should therefore have been disregarded in its entirety. Secondly, he submits that FIFA did not adduce any evidence regarding the value of the alleged benefit received. However, both Article 10 of the FCE 2009 and Article 20 of the FCE 2012 require that the gift/benefit in question must exceed a particular threshold before a violation will be found to have occurred. The failure to adduce evidence regarding the value of the gift/benefit is therefore fatal to the charge.

113. In relation to the issue of Mr. Bleicher's credibility, the Appellant submits that Mr. Bleicher informed the Appellant that he was not part of Qatar's bid to host the 2022 World Cup. In subsequent conversations with FIFA, however, Mr. Bleicher appears to have stated that he was a consultant for the Qatar Bid Committee. The Appellant contends that Mr. Bleicher has therefore provided changing and conflicting accounts of his role and his connection to the Qatar Bid Committee. His evidence is unreliable and should be disregarded.

114. In relation to the value of the gift/benefit, the Appellant submits that:

(a) The Appellant did not receive or accept any gift/benefit; nor did he intend to do so.

(b) The Appellant did not seek any type of benefit or advantage from Mr. Bleicher. Instead, he merely inquired as to the availability of the camp for his nephew or son. Moreover, the Appellant did this in the context of a discussion about payment of the expenses that was initiated by Mr. Bleicher, not the Appellant.

115. In these circumstances, the Appellant submits that FIFA cannot establish a violation of Article 20 of the FCE 2012 in this case.

bb) Article 19 (Conflict of interests)

116. The Appellant submits that at no point was there any conflict of interest for the purposes of either the FCE 2009 or the FCE 2012.

117. The Appellant reiterates that Mr. Bleicher's evidence is unreliable and should be disregarded. The Appellant submits that if that evidence is disregarded then there is no appearance of impropriety and therefore no violation of Article 19 of the FCE 2012.

118. Further, the Appellant submits that there are multiple possible interpretations of the evidence. In those circumstances, the CAS Panel cannot be comfortably satisfied that a violation of Article 19 occurred.

119. Lastly, the Appellant submits that while the relevant conflict of interest provisions in the FCE 2009 and in the FCE 2012 *"are almost identical"*, Article 5(2) of the FCE 2012 – which expands liability for violations of the FCE to encompass attempted acts – constituted a *"fundamental"* change in the scope of the FCE. That change to the ethical framework was so significant that the Appeal Committee's finding of a violation of Article 19 of the FCE 2012 must be set aside.

cc) Article 15 (Loyalty)

120. The Appellant submits that at all times he acted in accordance with his fiduciary duty to FIFA. The Appellant led the Bid Evaluation Group as it carried out its mandate of evaluating the various bids for the 2018 and 2022 World Cups. The Appellant points out that his role was to review the bids submitted to FIFA and to provide relevant information to the FIFA decisions makers. In discharging that function, the Appellant did not rank bids but merely reviewed the technical aspects of the bids and identified the respective risks and merits of each particular bid. The Appellant did not participate in the vote that resulted in Qatar being awarded the 2022 World Cup. The Appellant neither encouraged nor discouraged the acceptance of the Qatar bid.

121. The Appellant submits that the Bid Evaluation Group *"did not waver"* in relation to their assessment of Qatar's World Cup bid. The communications between the Appellant and Mr. Bleicher therefore had no influence on the contents of its evaluations. The Appellant submits that he discharged his duties in an effective, transparent and fair manner. In these circumstances, there was no violation of Article 15 of the FCE 2012.

122. Further, the Appellant maintains (as he does in relation to Articles 19 and 20) that although the loyalty provisions in the FCE 2009 and FCE 2012 are *"almost identical"*, the inclusion of Article 5(2) of the FCE 2012 constituted such a fundamental change in the applicable legal framework that the Appeal Committee's findings in relation to Article 15 of the FCE 2012 must be set aside.

dd) Article 13 (General rule of conduct)

123. The Appellant submits that since there was no violation of Articles 15, 19 or 20 of the FCE 2012, it follows that there cannot have been any violation of Article 13, as liability under Article 13 is conditional upon the existence of specific violations of other provisions of the FCE.

124. Furthermore, the Appellant submits that he was aware of his duties and discharged them correctly; he respected all applicable laws; and he behaved in an ethical manner at all times.

125. Lastly, the Appellant repeats the argument that the introduction of Article 5(2) of the FCE 2012 heralded such a significant change in the scope of the FCE that the Appeal Committee's finding of a violation of Article 13 of the FCE 2012 was unsustainable and must be set aside.

2. FIFA's position

aa) Article 20 (Offering and accepting gifts and other benefits)

126. FIFA states that its main submission in relation to Article 20 is that, *"soliciting a gift and/or benefit implies acceptance of the same"*. The fact that Article 10 of the FCE 2009 did not contain an explicit prohibition on *"attempting"* is therefore irrelevant since a violation is committed by the very fact of soliciting an inappropriate gift/benefit. Accordingly, the prohibition on accepting a gift/benefit encompasses the act of soliciting that same gift.

127. In any event, FIFA submits that the exchange of correspondence between the Appellant and Mr. Bleicher establishes that, in addition to the initial request by the Appellant, there was a further offer by Mr. Bleicher followed by an acceptance of that offer by the Appellant. Specifically, Mr. Bleicher offered to pay the costs of accommodating and training the Appellant's son and nephew. The Appellant responded by thanking Mr. Bleicher and then followed this up by seeking further details.

128. FIFA submits that the documentary record speaks for itself. Mr. Bleicher was clearly a representative of the Qatar Bid Committee as well as being a representative of an entity with a clear financial interest in Qatar hosting the 2022 World Cup. The Appellant's communications with Mr. Bleicher placed him in an extremely compromised position and it is understandable that he responded in a favourable manner given the Appellant's influence and control over the Qatar bid evaluation report.

129. FIFA submits that the gift/benefit sought by the Appellant was received at the moment when Mr. Bleicher accepted the request and confirmed that the related costs would be covered. Furthermore, FIFA submits that it is clear that the gifts/benefits sought by the Appellant were not of a merely symbolic or trivial value; on the contrary, accommodating and training two individuals for several weeks would have been likely to entail significant costs.

130. FIFA rejects the Appellant's argument that there are inconsistencies in the record that would justify disregarding all evidence relating to Mr. Bleicher. FIFA points out that Mr. Bleicher is

not a witness in these proceedings and neither side has called upon him to provide evidence. The alleged violations of the FCE are not based on testimony of Mr. Bleicher. Rather, the documentary record of the communications between the Appellant and Mr. Bleicher provides irrefutable documentary evidence which demonstrates the Appellant's knowledge that Mr. Bleicher was connected to the Qatari bid and that the Appellant initiated the request for certain benefits for his son and nephew.

bb) Article 19 (Conflict of interests)

131. FIFA supports the Appeal Chamber's analysis in relation to Article 19 of the FCE 2012. FIFA submits that the Appellant's requests to Mr. Bleicher while the process of evaluating bids was underway gave rise to an obvious conflict of interest:

(a) The Appellant made the requests immediately after the Bid Evaluation Group's visit to Qatar, at a time when the Appellant was in the middle of drafting the final evaluation reports on all of the World Cup bids.

(b) The Appellant made the request immediately after a press conference at which he suggested that there would be significant logistical challenges involved in Qatar hosting the World Cup.

(c) There was a clear and readily identifiable connection between Aspire and the Qatar Bid Committee. The Qatar Bid Book contained a one-page picture of Mr. Bleicher and set out Aspire's financial stake in the Qatar bid. The connection was also apparent from the formal involvement of Aspire and Mr. Bleicher in the site inspection visit during the Bid Evaluation Group's official visit to Qatar.

(d) The Appellant's correspondence with Mr. Bleicher left no doubt that the Appellant had asked Mr. Bleicher to provide him with his proposals for the accommodation and training of his nephew and son. The Appellant thanked Mr. Bleicher when he confirmed that the costs relating to that accommodation and training would be covered.

(e) Accordingly, the private/personal interests involved created a situation that could lead to a direct conflict of interest as there was an appearance that the Appellant could be detracted from performing his duties as Chairman of the Bid Evaluation Group with integrity and in an independent and purposeful manner. In all the circumstances, the request gave rise to the appearance of a link between the request and the Appellant's involvement in the production and submission of the bid evaluation report.

132. In addition, FIFA submits that the Appellant committed a further conflict of interest by providing inadequate disclosure to FIFA of the relevant facts. In particular, when Mr. Bleicher agreed to the Appellant's request, the Appellant had a duty to provide full disclosure of the existence of the conflict of interest to the competent FIFA bodies. The Appellant failed to do this. In particular, he failed to disclose the information before attending the FIFA Executive

Committee meeting on 19 November 2010, at which the bid evaluation reports were filed and discussed. As a result, the Appellant committed a further breach of Article 19 of the FCE 2012.

cc) Article 15 (Loyalty)

133. FIFA submits that soliciting an undue advantage to the detriment of FIFA, and engaging in a clear conflict of interests, both constituted an obvious breach of the Appellant's duty of loyalty to FIFA. FIFA rejects the Appellant's argument that he acted in accordance with his fiduciary duties. There was no justification for the Appellant's actions, which could only serve to harm FIFA's interests.

134. FIFA further contends that it is irrelevant that the Appellant did not participate in the vote at which the hosting rights of the 2018 and 2022 World Cups were determined. It also rejects the Appellant's claim that his conduct in this case was consistent with the practices of FIFA. On the contrary, FIFA submits that it is plainly not in accordance with FIFA's practices under any edition of the FCE for FIFA officials to make requests for personal benefits to representatives of bidding nations. FIFA strongly resists the Appellant's assertion that he acted in accordance with the principles of transparency and equality.

135. In the circumstances, FIFA therefore submits that the Appellant did commit a violation of Article 15 of the FCE 2012. FIFA adds, however, that the Appeal Committee was correct to determine that the Appellant should not be sanctioned separately for the violation of this provision in view of the sanctions that had already been imposed for the same conduct under Articles 19 and 20 of the FCE 2012.

dd) Article 13 (General rule of conduct)

136. FIFA submits that the Appeal Committee was correct to find that the Appellant violated Article 13 of the FCE 2012. FIFA contends that it is clear that the Appellant, as Chairman of the Bid Evaluation Group, deliberately solicited a benefit/gift from Mr. Bleicher. That conduct was plainly inconsistent with the obligation under Article 13 to *"behave in a dignified manner"* and to *"demonstrate full credibility and integrity"*.

137. FIFA points out that violations of Article 13 are not confined to instances concerning the prohibition of illicit behaviour. In support, FIFA refers to CAS 2011/A/2426 where the Panel explained that, *"It is not merely of some importance but is of crucial importance that top football officials should not only be honest, but should evidently and undoubtedly be seen to be honest. The required standard of behaviour for top football officials is very high, as nothing is to be done which creates even a suspicion that the exercise of their duties (…) could be influenced by an improper interference"*.

138. Accordingly, even if – which FIFA disputes – the Appellant had been entitled to obtain the benefits promised by Mr. Bleicher, this would not mean that the Appellant had demonstrated the dignity, credibility and integrity required of senior FIFA officials under Article 13 of the FCE 2012.

d) Issue 3: If the decision of the Appeal Committee is not annulled, should the prohibition on participating in football-related activities for three years be replaced with a warning, reprimand or shorter prohibition?

1. The Appellant's position

139. The Appellant submits that the three-year ban on participating in any football-related activity imposed by the Appeal Committee is disproportionate.

140. In support of this argument, the Appellant draws a comparison between the three-year ban imposed in this case and the three-year ban imposed in CAS 2011/A/2426. In that case a member of the FIFA Executive Committee had been caught soliciting bribes of several hundred thousand dollars in exchange for supporting a particular bid for the 2022 World Cup. The Appellant submits that the wrongdoing in the present case is significantly less serious than the wrongdoing in that case. The penalty imposed on the Appellant therefore ought to be lower than the sanction imposed in that case.

141. Similarly, the Appellant submits that the wrongdoing in the present case is much less severe than the wrongdoing in CAS 2011/A/2433, where a two-year ban was imposed on a member of the FIFA Executive Committee who was caught soliciting bribes in respect of the bidding process for the 2018 and 2022 World Cups. In contrast to that case, the Appellant was not caught selling his influence in this case.

142. The Appellant also draws a contrast between the present case and the sanctions imposed on the former president of UEFA, Mr. Michel Platini, and the former president of FIFA, Mr. Sepp Blatter, who were respectively subjected to bans of four years and six years, together with fines of CHF 80,000 and CHF 50,000. The Appellant submits that those cases concerned bribery and corruption; accepting gifts and other benefits; conflicts of interest; and breaches of loyalty and general rules of conduct. Mr. Platini and Mr. Blatter were the most senior individuals in the world of football and, in contrast to the present case, their cases involved actual receipt of undue benefits. The Appellant submits that a comparison with the sanctions imposed in those cases demonstrates the manifest disproportionality of the three-year ban imposed in the present case.

143. The Appellant goes on to submit that a three-year ban *"will effectively end the Appellant's career in football, and is tantamount to (…) a lifetime ban"*. He asserts that the following factors constitute powerful mitigation in the present case:

(a) The Appellant's blemish-free record during a 20-year career in football. (In this respect, the Appellant states that in addition to his role as the President of the Chilean Football Federation, *"he was considered to be a person in the running of [sic] the FIFA presidency"*);

(b) The absence of any actual transfer or receipt of benefit by the Appellant or anyone else;

(c) The fact that the Appellant discharged his duties in respect of the evaluation of World Cup bids effectively;

(d) The Appellant's cooperation with the Investigative Chamber and Adjudicatory Chamber of the FIFA Ethics Committee. The Appellant points out voluntarily attended a deposition before the Chairman of the FIFA Ethics Committee in January 2014; provided prompt written answers to subsequent written questions from the FIFA Ethics Committee; and gave honest and forthright testimony before the Adjudicatory Chamber; and

(e) The fact that the Appellant has acknowledged his mistake and expressed sincere contrition in relation to it.

144. The Appellant submits that the appropriate penalty in the present case would be a warning or reprimand. Alternatively, if a ban is to be imposed, the duration should be no longer than one year.

2. FIFA's position

145. FIFA contends that while a seven-year ban may have been open to challenge as disproportionate, a three-year ban is a lenient sanction in view of the seriousness of the Appellant's misconduct.

146. FIFA submits that, in assessing the proportionality of the sanction imposed, the CAS Panel should afford a margin of appreciation to the decision-maker whose decision is under challenge. In particular, the FIFA judicial bodies have the best understanding of the impact of the Appellant's actions on the sport of football and the measures that are needed in order to counteract that impact.

147. In any event, FIFA submits that the three-year ban imposed on the Appellant is plainly proportionate. In this regard, FIFA highlights a number of aggravating factors, which include the fact that:

(a) The Appellant committed a serious conflict of interest and a serious breach of his duty of loyalty;

(b) While the Appeal Committee reduced the ban in light of the Appellant's expressions of remorse, in his written submissions to the CAS Panel the Appellant *"is not in the slightest bit remorseful"*. The Appellant has insisted that he is innocent of wrongdoing and has failed to acknowledge any fault or wrongdoing on his part;

(c) The Appellant has not cited any evidence in support of his contention that a three-year ban is *"tantamount to a life ban"* which will effectively end his career in the sport; and

(d) In light of FIFA's well-documented problems, it would be *"a disaster"* for FIFA if the unethical conduct of one of its own senior officials was not sanctioned appropriately through a substantial ban on participating in football-related activities.

148. In relation to the Appellant's comparison with the sanctions imposed on Mr. Blatter and Mr. Platini, FIFA points out that the Appellant is wrong to suggest that those cases involved sanctions for bribery and corruption. On the contrary, those cases concerned Articles 13, 15, 19 and 20 of the FCE 2012 – exactly the same provisions of the FCE that the Appellant is alleged to have violated. The Appellant's reliance on the sanctions imposed in those cases therefore does not support a reduction of the three-year ban imposed by the Appeal Committee in this case.

V. JURISDICTION

149. Article R47 of the CAS Code provides:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

150. Article 81(1) of the FCE 2012 and Article 55(3) of the FIFA Statutes both state that:

> *"Decisions taken by the Appeal Committee are final, subject to appeals lodged with the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the FIFA Statutes".*

151. Article 57 of the FIFA Statutes provides that:

> *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".*

152. According to the FIFA Statutes an *"official"* is *"any board member (including the members of the Council), committee member, referee and assistant referee, coach, trainer and any other person responsible for technical, medical and administrative matters in FIFA, a confederation, a member association, a league or a club as well as all other persons obliged to comply with the FIFA Statutes (except players and intermediaries)".*

153. FIFA did not contest the jurisdiction of the CAS in respect of the appeal. Moreover, both parties confirmed the CAS's jurisdiction by signing the Order of Procedure. In these circumstances, the Panel is satisfied that CAS has jurisdiction to hear and determine this appeal.

VI. ADMISSIBILITY

154. Article R49 of the CAS Code states:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

155. Article 58.1 of the FIFA Statutes provides that:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".*

156. The Appellant received the grounds of the Appeals Committee's decision on 8 February 2017 and filed his Statement of Appeal on 27 February 2017. The Appellant submits that since the appealed decision was an appeal of the Adjudicatory Chamber of the FIFA Ethics Committee, he has exhausted all internal FIFA legal remedies in accordance with the requirements of Article 58(2) of the FIFA Statutes and Article R52(1) of the CAS Code. FIFA does not dispute the admissibility of the appeal.

157. In these circumstances, the Panel concludes that the appeal is admissible.

VII. APPLICABLE LAW

158. Article R58 of the CAS Code states:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

159. Article 57 of the FIFA Statutes states:

> *"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

160. The Appellant submits therefore that the laws applicable to this appeal are the FIFA Statutes, the FCE and Swiss law. FIFA states that it is common ground that the law applicable to this appeal is primarily the FIFA regulations (in particular the FCE) and Swiss law.

161. The Panel concludes that the law applicable to this appeal is the FIFA regulations (principally the FCE) and Swiss law (subsidiarily). As noted above, however, there is a dispute between the parties as to which version of the FCE is applicable to this dispute. The Panel addresses this issue further at paragraphs 181 to 183 below.

The relevant regulations

a) The FIFA Code of Ethics 2009

162. Article 3 of the of the FIFA Code of Ethics 2009 (the "**FCE 2009**") stated:

"1. Officials are expected to be aware of the importance of their function and concomitant obligations and responsibilities. Their conduct shall reflect the fact that they support and further the principles and objectives of FIFA, the confederations, associations, leagues and clubs in every way and refrain from anything that could be harmful to these aims and objectives. They shall respect the significance of their allegiance to FIFA, the confederations, associations, leagues and clubs and represent them honestly, worthily, respectably and with integrity.

2. Officials shall show commitment to an ethical attitude when performing their duties. They shall pledge to behave in a dignified manner. They shall behave and act with complete credibility and integrity.

3. Officials may not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains".

163. Article 5(2)-(3) of the FCE 2009 stated:

"2. While performing their duties, officials shall avoid any situation that could lead to conflicts of interest. Conflicts of interest can arise if officials have, or appear to have, private or personal interests that detract from their ability to perform their duties as officials with integrity in an independent and purposeful manner. Private or personal interests include gaining any possible advantage for himself, his family, relatives, friends and acquaintances.

3. Officials may not perform their duties in cases with an existing or potential conflict of interest. Any such conflict shall be immediately disclosed and notified to the organisation for which the official performs his duties".

164. Article 9(1) of the FCE 2009 stated:

"While performing their duties, officials shall recognise their fiduciary duty, especially to FIFA, the confederations, associations, leagues and clubs".

165. Article 10(1) of the FCE 2009 stated:

"Officials are not permitted to accept gifts and other benefits that exceed the average relative value of the local customs from any third parties. If in doubt, gifts shall be declined. Accepting gifts in cash in any amount or form is prohibited".

b) The FIFA Code of Ethics 2012

166. Article 1 of the FCE 2012 defines the *"Scope of applicability"* of the Code. It states:

"This Code shall apply to conduct that damages the integrity and reputation of football and in particular to illegal, immoral and unethical behaviour. The Code focuses on general conduct within association football that has little or no connection with action on the field of play".

167. Article 2 defines the *"Persons covered"* by the FCE 2012 in the following terms:

> *"This Code shall apply to all officials and players as well as match and players' agents who are bound by this Code on the day the infringement is committed".*

168. Article 3 of the FCE 2012 concerns the temporal scope of the Code. It states:

> *"This Code shall apply to conduct whenever it occurred including before the passing of the rules contained in this Code except that no individual shall be sanctioned for breach of this Code on account of an act or omission which would not have contravened the Code applicable at the time it was committed nor subjected to a sanction greater than the maximum sanction applicable at the time the conduct occurred. This shall, however, not prevent the Ethics Committee from considering the conduct in question and drawing any conclusions from it that are appropriate".*

169. Article 5 of the FCE 2012 provides:

> *"1. The Ethics Committee may pronounce the sanctions described in this Code, the FIFA Disciplinary Code and the FIFA Statutes on the persons bound by this Code.*
>
> *2. Unless otherwise specified, breaches of this Code shall be subject to the sanctions set forth in this Code, whether acts of commission or omission, whether they have been committed deliberately or negligently, whether or not the breach constitutes an act or attempted act, and whether the parties acted as participant, accomplice or instigator".*

170. Article 9 of the FCE 2012 is entitled *"General rules"*. Article 9(1) provides:

> *"The sanction may be imposed by taking into account all relevant factors in the case, including the offender's assistance and cooperation, the motive, the circumstances and the degree of the offender's guilt".*

171. Article 13 of the FCE 2012 establishes *"General rules of conduct"* as follows:

> *"1. Persons bound by this Code are expected to be aware of the importance of their duties and concomitant obligations and responsibilities.*
>
> *2. Persons bound by this Code are obliged to respect all applicable laws and regulations as well as FIFA's regulatory framework to the extent applicable to them.*
>
> *3. Persons bound by this Code shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity.*
>
> *4. Persons bound by this Code may not abuse their position in any way, especially to take advantage of their position for private aims or gains".*

172. Article 15 of the FCE 2012 is entitled *"Loyalty"*. It provides:

"Persons bound by this Code shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs".

173. Article 19 of the FCE 2012 concerns *"Conflicts of interest"*. It provides:

"1. When performing an activity for FIFA or before being elected or appointed, persons bound by this Code shall disclose any personal interests that could be linked with their prospective activities.

2. Persons bound by this Code shall avoid any situation that could lead to conflicts of interest. Conflicts of interest arise if persons bound by this Code have, or appear to have, private or personal interests that detract from their ability to perform their duties with integrity in an independent and purposeful manner. Private or personal interests include gaining any possible advantage for the persons bound by this Code themselves, their family, relatives, friends and acquaintances.

3. Persons bound by this Code may not perform their duties in cases with an existing or potential conflict of interest. Any such conflict shall be immediately disclosed and notified to the organisation for which the person bound by this Code performs his duties.

4. If an objection is made concerning an existing or potential conflict of interest of a person bound by this Code, it shall be reported immediately to the organisation for which the person bound by this Code performs his duties for appropriate measures".

174. Article 20 of the FCE 2012 is concerned with the offering and acceptance of gifts and benefits. It provides:

"1. Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, which

a) have symbolic or trivial value;

b) exclude any influence for the execution or omission of an act that is related to their official activities or falls within their discretion;

c) are not contrary to their duties;

d) do not create any undue pecuniary or other advantage and

e) do not create a conflict of interest.

Any gifts or other benefits not meeting all of these criteria are prohibited.

2. If in doubt, gifts shall not be offered or accepted. In all cases, persons bound by this Code shall not offer to or accept from anyone within or outside FIFA cash in any amount or form.

3. Persons bound by this Code may not be reimbursed by FIFA for the costs associated with family members or associates accompanying them to official events, unless expressly permitted to do so by the appropriate organisation. Any such permission will be documented.

4. Persons bound by this Code must refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct as described in the foregoing sections, or any attempt thereof".

175. Article 51 of the FCE 2012 establishes the standard of proof applicable to alleged violations of the Code:

"Standard of proof

The members of the Ethics Committee shall judge and decide on the basis of their personal convictions".

This must be read in conjunction with Article 52 of the FCE 2012, which governs the burden of proof:

"Burden of proof

The burden of proof regarding breaches of provisions of the Code rests on the Ethics Committee".

VIII. MERITS

A. Preliminary issue: Appellant's application for direction requiring FIFA to produce further documents

176. Before addressing the merits of the appeal, the Panel must first determine the Appellant's request for an order compelling FIFA to provide the Appellant with copies of Mr. Garcia's Report into the 2018/2022 World Cup bidding process and un-redacted transcripts of Mr. Bleicher's interviews with the Investigatory Chamber.

177. Having carefully considered the matter, the Panel concluded following the hearing that it would not be appropriate to direct FIFA to provide copies of either of the documents sought by the Appellant. In relation to the Report, the Panel does not accept that the content of the investigation conducted by Mr. Garcia is likely to be relevant to the issues in this case. In particular, for the reasons explained below, the evidential case against the Appellant rests on the content and timing of emails sent by the Appellant in September and October 2010. The Appellant does not dispute the existence, content or timing of those emails or the identities of the sender and recipient. Since the meaning and effect of those emails depends primarily on their content and timing, the Panel is satisfied that it is unlikely that further extraneous evidence exists which would cast those communications in a fundamentally different light.

178. In relation to the transcript of Mr. Bleicher's interview, for the reasons set out below Mr. Bleicher's credibility is only of marginal relevance to the issues which the Panel is required to decide concerning the meaning and legal effect of the emails sent by the Appellant to Mr.

Bleicher in September and October 2010. Further, the Panel notes that the Appellant has not sought to obtain evidence directly from Mr. Bleicher, nor did he take any steps to procure Mr. Bleicher's attendance before the CAS.

179. In these circumstances, the Panel is satisfied that the conditions in Article 44.3 of the CAS Code are not met and, even if they were, it would not be appropriate to order FIFA to produce the documents requested by the Appellant.

B. Burden and standard of proof

180. At the outset, the Panel notes that FIFA bears the burden of establishing the Appellant's alleged violations of the FCE to the comfortable satisfaction of the Panel. As the CAS jurisprudence recognises, the standard of comfortable satisfaction is more onerous than the civil standard of balance of probabilities, but is not as high as the criminal standard of proof beyond reasonable doubt.

C. Issue 1: Should the decision of the Appeal Committee be annulled on the basis that it violated the doctrine of *nulla poena sine legge praevia*?

181. The Panel considers that the appropriate starting point for its analysis of this issue is Article 3 of the FCE 2012. This provides that the FCE 2012 *"shall apply to conduct whenever it occurred including before the passing of the rules contained in this Code"*. However, the retroactive application of the FCE 2012 is subject to an important caveat, namely that: *"no individual shall be sanctioned for breach of this Code on account of an act or omission which would not have contravened the Code applicable at the time it was committed"*.

182. The wording of Article 3 of the FCE 2012 is not a model of clarity. Nevertheless, the essential effect of the article is clear and well established. In CAS 2016/A/4474 the Panel noted that Article 3 of the FCE 2012 applies the new edition of the FCE retroactively unless doing so is less favourable to the individual concerned than applying the version of the FCE that was in force at the time of the events in question. The Panel held that although the starting point was different, Article 3 of the FCE 2012 followed a similar approach to the traditional *lex mitior* principle, which qualifies the general prohibition against retroactive rule-making by permitting the retroactive application of a new rule where its effect is more favourable to the person concerned than the rule in force at the time of relevant events.

183. Accordingly, it is therefore necessary to compare the scope of liability under the relevant ethical rules in force at the time of the Appellant's dealings with Mr. Bleicher (viz. the FCE 2009) and to compare it with the scope of liability under the ethical rules in force at the time of the subsequent disciplinary proceedings before FIFA (viz. the FCE 2012). If the application of the FCE 2012 to acts that occurred in 2010 would be less favourable to the Appellant than the application of the FCE 2009 to those acts, then Article 3 of the FCE 2012 requires the Panel to apply the more generous provisions of the FCE 2009. Article 3 of the FCE 2012 thereby acts as a safeguard against retroactive changes to the applicable rules that have the effect of penalising acts and omissions that were not unlawful at the time when they were committed.

184. The Panel notes that the Appellant's challenge based on the *nulla poena sine legge praevia* doctrine is essentially confined to his conviction under Article 20 of the FCE 2012. In this regard, the Panel notes that:

(a) Article 20(1) of the FCE 2012 prohibits *"offer[ing] or accept[ing] gifts or other benefits"*. Article 10 of the FCE 2009 prohibits *"accept[ing] gifts and other benefits"*. Neither article, however, expressly prohibits the mere *requesting* of gifts and other benefits.

(b) Article 5(2) of the FCE 2012 introduced a new provision into the FCE which expressly prohibits *attempts* to do acts that, if committed, would violate the substantive provisions of the FCE 2012. There is no equivalent provision regarding attempts in the FCE 2009.

185. The salient question, therefore, is whether the express prohibition on *"accept[ing]"* benefits – which exists in both the 2009 and 2012 versions of the FCE – is capable of being interpreted in a way that includes a situation where a person requests a benefit and intends to receive it, but does not ultimately go on to actually receive it.

186. In seeking to answer this question, the Panel must have regard to the established principles of statutory interpretation. In CAS OG 14/002 the Panel provided the following summary of the applicable principles of interpretation under Swiss law (see para 7.3-7.4):

> *"Under Swiss law, the interpretation of statutes has to be rather objective and always start with the wording of the rule. The adjudicating body – in this instance the Panel – will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association that drafted the rule, and such body may also take account of any relevant historical background that illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located".*

187. In CAS 2013/A/3324 & 3369 the Panel provided a useful summary of the relevant principles of interpretation established by the CAS case law:

> *"CAS jurisprudence itself establishes the following principles of interpretation of those regulations of a federation breach of which entail disciplinary sanctions:*
>
> *(i) They must be precise if binding upon athletes or, mutatis mutandis, clubs (cf. e.g. CAS 2007/A/1437).*
>
> *(ii) (Accordingly) any ambiguity in the rules must be construed contra proferentem. The rule maker, not the ruled, must suffer the consequences of imprecision (cf. e.g. CAS 2011/A/2612).*
>
> *(iii) However, the rules must be applied according to their spirit not merely according to their letter. In other words, the Panel has to interpret the rules in question in keeping with the perceived intention of the rule maker, and not in a way that frustrates it (cf. CAS 2011/A/354 & 355; CAS 2007/A/1437 and CAS OG 12/002)".*

188. In relation to (ii), the CAS case law has repeatedly emphasised that inconsistencies or ambiguities in disciplinary rules must be construed against the legislator in accordance with the principle of *contra proferentem* (see, in this regard, CAS 2013/A/3324 & 3369; CAS 94/129; CAS 2009/A/1752; CAS 2009/A/1753; CAS 2007/A/1473; CAS 2011/A/2612; and CAS 2014/A/3832).

189. Applying the principles of interpretation summarised above, the Panel rejects FIFA's principal argument that the Appellant must be considered to have *accepted* a benefit from Mr. Bleicher as an inexorable consequence of having *requested* it.

190. The Panel considers that there is an important difference between inviting a person to provide a gift/benefit and actually receiving such a gift/benefit. In particular, as a matter of straightforward interpretation, the Panel notes that there is a qualitative distinction between accepting a benefit (which entails actual provision and receipt of the benefit) and merely requesting a benefit (which entails a desire to receive a benefit – and an attempt to procure it – but no actual receipt).

191. The Panel notes that there is nothing in the language of Article 10 of the FCE 2009 or Article 20(1) of the FCE 2012 to suggest that the legislator intended the word "accepts" to include both the actual receipt of a benefit and a mere request for a benefit without any actual corresponding receipt.

192. FIFA's approach would have the paradoxical consequence that a person who requested a benefit would be deemed to have "accepted" the benefit even in circumstances where (i) the request is emphatically rejected by the addressee; and/or (ii) it would be physically impossible for the addressee to provide the benefit requested (for example, because the request relates to a physical object that does not exist). These illogical consequences of FIFA's approach fortify the Panel's conclusion that neither Article 10 of the FCE 2009 nor Article 20 of the FCE 2010 prohibited mere requests to be provided with a particular benefit.

193. Further, while Article 5(2) and Article 20(4) of the FCE 2012 prohibits attempts to accept prohibited benefits, there was no equivalent provision in force under the FCE 2009. Accordingly, pursuant to the *lex mitior* principle reflected in Article 3 of the FCE 2012, neither Article 5(2) nor Article 20(4) can be used in order to establish a violation of Article 20(1) based upon an attempt to accept a prohibited benefit. In any event, however, for the reasons explained above the Panel does not consider that a request for a particular benefit can accurately be characterised as an "attempt" to "accept" the benefit. By requesting a benefit, a person does an act which signals their intention to accept that benefit if it is subsequently offered to them sometime in the future. However, this is conceptually distinct from an "attempt" to accept a benefit – which necessarily involves an attempted act of acceptance/receipt in the present, rather than a mere intention to accept/receive in the future if the request is granted.

194. Accordingly, while it is clear in the present case that the Appellant expressly requested particular benefits from Mr. Bleicher, no benefit was ever actually provided to the Appellant or any of his relatives. While such a request would be likely to violate Article 20 read with Article 5(2) of the

FCE 2012 if it was made today, the Panel concludes that it would not have violated Article 10 of the FCE 2009; nor would it have violated Article 20 of the FCE 2012 read in isolation from Article 5(2). In those circumstances, the Panel therefore concludes that the Appeal Chamber's conclusion that the Appellant was guilty of violating Article 20 of the FCE 2012 must be quashed. This conclusion does not mean that the actions of the Appellant do not constitute a violation of the FCE or that the violation is of minor importance. It simply means that they were not a violation of Article 20 FCE 2012.

195. In relation to Articles 13, 15 and 19, the Panel notes that the Appellant accepts that these provisions are materially identical to the corresponding provisions regarding general conduct, loyalty and conflicts of interest under the corresponding provisions in the FCE 2009. The Appellant argues, however, that the creation of Article 5(2) of the FCE 2012 constituted such a fundamental change to the applicable legal framework that the Appeal Committee's findings of violations of Articles 13, 15 and 19 must be set aside.

196. The Panel is unable to accept this submission. While the argument would undoubtedly have merit if the alleged violations of Articles 13, 15 and 19 were dependent upon the express inclusion of attempts within the class of prohibited acts under Article 5(2), this was not the case here. The Appeal Committee did not find that the Appellant had violated Articles 13, 15 and 19 as a result of an attempted act. Rather, the Appeal Committee found that the mere requesting of a benefit was sufficient to constitute a substantive violation of each of those articles regardless of whether or not the benefit was ever actually provided. The Appeal Committee did not (and did not need to) invoke Article 5(2) in order to find that the Appellant had violated Articles 13, 15 and 19 of the FCE 2012. The Appellant's argument that the Appeal Committee's decision violated the *nulla poena sine legge praevia* doctrine is therefore rejected insofar as it relates to Articles 13, 15 and 19 of the FCE 2012.

D. Issue 2: Alternatively, should the decision of the Appeal Committee be annulled on the basis that FIFA has failed to discharge the burden of proving that the Appellant violated the relevant provisions of the FCE?

197. Having determined that the conviction under Article 20 of the FCE 2012 must be set aside, the Panel must now address the underlying factual merits of the alleged violations of Articles 13, 15 and 19 of the FCE 2012.

a) The Appellant's arguments concerning the reliability of Mr. Bleicher's evidence

198. At the outset, the Panel notes that the Appellant challenges the findings that he violated Articles 13, 15 and 19 of the FCE 2012 on the basis (amongst other things) that the evidence of Mr. Bleicher was unreliable and should have been disregarded. The Panel does not accept that this is a valid criticism of the Appeal Committee's decision. In particular:

(a) The Panel is comfortably satisfied that the Appellant was aware of Mr. Bleicher's role and his connection to the Qatar Bid Committee. In particular, the Panel notes that the Appellant met Mr. Bleicher during an official World Cup bid inspection visit to the

Aspire Academy, whose close link to the Qatar World Cup bid was obvious (and, indeed, was made explicit in the Qatar Bid Book).

(b) The crux of the evidential case against the Appellant is based on the content of emails that the Appellant sent to Mr. Bleicher. The Appellant does not dispute the fact that he sent those messages; nor does he dispute their content. Evidence from Mr. Bleicher cannot alter the clear and unambiguous meaning of the messages that were written and sent by the Appellant on his own initiative and in full knowledge of the identity and role of the addressee.

b) Article 19 (Conflict of interest)

199. Having carefully considered the parties' respective submissions, the Panel is comfortably satisfied that the Appellant's actions violated Article 19 of the FCE 2012. In particular, the Panel notes that:

(a) As Chairman of the Bid Evaluation Group, it was essential for the Appellant to maintain a position of scrupulous independence and impartiality throughout the entire period when the Bid Evaluation Group was conducting its appraisal of the various World Cup bids. The need for rigorous impartiality would have been obvious to any competent official in the Appellant's position, and was expressly underscored by the terms of clause 1.3 of the Consultancy Agreement.

(b) In particular, it was incumbent upon the Appellant to ensure that there was no actual or perceived blurring of his official role and responsibilities and his personal interests. The Appellant was required to conduct an objective, fair and independent evaluation of the merits of the different World Cup bids and to present the Bid Evaluation Group's conclusions in a neutral and unbiased fashion. In order to discharge those responsibilities effectively, the Appellant had a clear obligation to ensure that he did not engage in any conduct that could lead an impartial observer to conclude that there was a real possibility that his execution of those responsibilities could potentially be influenced by a desire to obtain a particular private benefit or advantage.

(c) At a crucially sensitive stage of the bid evaluation process (and within just a few days of the Bid Evaluation Group's official visit to Qatar) the Appellant initiated contact with an individual whom he knew was affiliated with the Qatar Bid Committee. In unsolicited communications with Mr. Bleicher, the Appellant made reference to the Bid Evaluation Group's recent visit to the Aspire Academy and then immediately proceeded to ask Mr. Bleicher to provide specific benefits to three specifically identified members of the Appellant's close family. In so doing, the Appellant created a significant conflict between his duty to conduct a neutral and objective evaluation of Qatar's World Cup bid and his personal interest in securing a desired benefit for his son, nephew and brother-in-law.

(d) Having solicited particular private benefits from an individual associated with the Qatar Bid Committee, the Appellant thereafter did nothing to dispel the appearance of an irreconcilable conflict of interest. Instead, he continued to pursue the requested benefits over a period of several weeks, during which time the Bid Evaluation Report for Qatar was being finalised by the Bid Evaluation Group.

200. In these circumstances, the Panel rejects the Appellant's argument that he did not violate the mandatory rules in Article 19 of the FCE 2012 about avoiding and disclosing conflicts of interest. The Panel is comfortably satisfied that the Appellant violated Article 19(2) by failing to avoid a situation that could lead to a conflict of interest. Further, the Appellant violated Article 19(3) by continuing to perform his duties as Chairman of the Bid Evaluation Group despite the existence of that serious and ongoing conflict of interest. In addition, the Appellant also violated Article 19(4) by failing to immediately report the existence of the conflict of interest once it had arisen. Contrary to the Appellant's submissions, the conflict of interest created by his correspondence with Mr. Bleicher was serious and ought to have been immediately obvious to the Appellant. The Panel is comfortably satisfied that the Appellant's challenge to the Appeal Committee's finding of a violation of Article 19 is entirely without merit.

c) Article 15 (Loyalty)

201. The Panel is similarly comfortably satisfied that the Appellant violated Article 15 of the FCE 2012. The Panel concurs with the reasoning of the Appeal Committee in relation to this issue.

202. As a FIFA official and as the Chairman of the Bid Evaluation Group, the Appellant owed an important fiduciary duty to FIFA. Pursuant to that duty, the Appellant was under a clear obligation not to promote his own interests (or those of individuals associated with him) while carrying out the important functions entrusted to him by FIFA.

203. The Panel has no doubt that the Appellant's conduct in soliciting (and thereafter pursuing) the provision of private benefits for his close family members from an individual and organisation affiliated with the Qatar Bid Committee was incompatible with his fiduciary duty to FIFA. By acting as he did, the Appellant sought to advance his own personal interests in a manner that was plainly inconsistent with FIFA's interests and failed to demonstrate the unqualified loyalty required by Article 15.

204. In this respect, the Panel notes that it is irrelevant whether or not the Appellant's communications with Mr. Bleicher had any effect on the content of the Bid Evaluation Report in relation to Qatar. In order to establish a violation of Article 15, FIFA does not need to establish that it suffered actual prejudice as a result of the Appellant's conduct, nor does it need to establish any connection between the Appellant's improper communications with Mr. Bleicher and the manner in which he evaluated and reported upon Qatar's World Cup bid. Instead, it is sufficient for FIFA to show that the Appellant took improper advantage of his position as Chairman of the Bid Evaluation Group and engaged in behaviour that was contrary to his duty to promote and protect FIFA's legitimate interests without regard to his own

personal interests. The Panel therefore has no hesitation in concluding that the Appellant breached his fiduciary duty to FIFA and thereby violated Article 15 of the FCE 2012.

d) Article 13 (General rule of conduct)

205. The Panel is comfortably satisfied that the Appellant's conduct in the present case violated Article 13 of the FCE 2012.

206. The Panel notes that within two days of the end of the Bid Evaluation Group's official visit to Qatar, the Appellant made an unsolicited request for a private benefit to an individual who was affiliated with the Qatar Bid Committee and who the Appellant had met during the context of the official World Cup bid inspection visit to Qatar. In the circumstances, the Panel has no hesitation in concluding that the Appellant failed to meet his obligation to behave in *"a dignified manner (…) with complete credibility and integrity"*, and that he took advantage of his position in order to pursue a private aim (see Article 13(3)-(4)). The Appellant's behaviour was also manifestly inconsistent with an awareness of *"the importance of [his] duties and concomitant obligations and responsibilities"* (see Article 13(1)).

207. As a senior FIFA official charged with carrying out one of the most important and high-profile functions in connection with FIFA's flagship international tournament, it ought to have been obvious to the Appellant that attempting to solicit any form of private advantage from a person whom he encountered during the course of his official role as Chair of the Bid Evaluation Group – and whom he knew to be affiliated to the official bid committee of a particular bidding nation – would be likely to imperil his credibility and integrity. In the Panel's view, the Appellant's deliberate decision to solicit a benefit from an individual whom he knew was affiliated with the Qatar Bid Committee therefore constituted a serious and inexcusable breach of the Appellant's ethical obligations under Article 13 of the FCE 2012.

E. Issue 3: If the decision of the Appeal Committee is not annulled, should the prohibition on participating in football-related activities for three years be replaced with a warning, reprimand or shorter prohibition?

208. Having overturned the Appeal Committee's finding of a violation of Article 20 FCE 2012, the sentence imposed by the Appeal Committee in respect of that violation must also be vacated. The two-year prohibition in respect of the violation of Article 20 of the FCE 2012 is therefore annulled.

209. The Panel notes that the sanction imposed by the Appeal Committee in respect of the violations of Articles 13, 15 and 19 of the FCE 2012 assumed that a two-year ban had been imposed in respect of the violation of Article 20, and that any further penalty must be determined in light of that sanction. Accordingly, since the Panel has overturned the Appeal Committee's analysis in relation to Article 20, the premise underpinning the Appeal Committee's approach to the violations of Articles 13, 15 and 19 has also been obviated. In these circumstances, the Panel must re-assess the appropriate penalty on the basis of the violations found by the Panel.

210. In re-assessing the applicable penalty, the Panel is mindful of the *ultra petita* principle. In its Answer, FIFA requested the Panel to uphold the three-year prohibition imposed on the Appellant by the Appeal Chamber. FIFA did not seek to challenge the sanction imposed by the Appeal Chamber and did not advocate for a longer ban. Accordingly, the prohibition imposed by the Appeal Chamber represents the maximum prohibition that the Panel could impose consistently with the *ultra petita* principle. Subject to that three-year maximum, however, the Panel is able to impose a proportionate prohibition which reflects the Panel's assessment of the gravity of the FCE violations that the Appellant committed.

211. As a preliminary observation, the Panel notes that although the majority of the seven-year ban imposed by the Adjudicatory Chamber and the majority of the three-year ban imposed by the Appeal Committee were imposed specifically in respect of the violation of Article 20 (which the Panel has held must be quashed) there is no explicit hierarchy amongst Articles 13, 15, 19 and 20 of the FCE 2012. In other words, a violation of Article 20 is not automatically and intrinsically more serious than a violation of Article 13, 15 and 19. Each case will turn on its own individual facts.

212. In the present case, the Panel notes that the Appellant committed serious violations of Articles 13, 15 and 19, although he did not ultimately derive any benefit (whether for himself or for any members of his family) as a result of those violations.

213. The Panel notes that there are a number of aggravating factors in the present case. In particular, the Panel notes that:

(a) As Chairman of the Bid Evaluation Committee, the Appellant held one of the most significant positions in the FIFA hierarchy. He was responsible for carrying out important and sensitive functions on behalf of FIFA. In light of his seniority and the high profile of the World Cup as FIFA's flagship international competition, any failure by the Appellant to comply with the ethical standards contained in the FCE was likely to have a significant adverse impact on FIFA's reputation, standing and interests.

(b) The Appellant made improper requests to obtain a private benefit at a particularly sensitive stage of the World Cup bidding process. In so doing, he abused his position and committed serious violations of Articles 13, 15 and 19 of the FCE 2012. The Appellant's deliberate violations of his ethical obligations were liable to cause severe harm to FIFA and had the potential to jeopardise the fairness, transparency and probity of the entire World Cup bidding process. Moreover, by actively requesting and soliciting particular benefits, the Appellant's culpability was greater than if he had merely passively accepted an entirely unsolicited benefit.

(c) The Appellant's violations of Articles 13, 15 and 19 of the FCE 2012 were not committed on a one-off or inadvertent basis. The Appellant deliberately pursued a course of conduct over several weeks without regard to his important ethical obligations under the FCE. Moreover, the Appellant did not voluntarily terminate his misconduct following the initial unsolicited communications with Mr Bleicher. On the contrary, the

Appellant persisted in his attempts to secure private benefits from Aspire and only ceased doing so when Mr. Bleicher asked to defer further discussion of the Appellant's requests until a later date in order to avoid *"incorrect interpretations"*.

214. On the other hand, the Panel notes that there are a number of mitigating factors that must be taken into account when determining what constitutes a proportionate penalty for the FCE violations committed by the Appellant. In particular:

(a) The Appellant has had a long and distinguished career in the sport of football. He has contributed significantly to the development and promotion of the sport around the world. This is the first occasion during the course of that career that here the Appellant has been convicted of any ethical violation.

(b) At the hearing before the Panel, the Appellant acknowledged that he had made a major mistake by communicating with Mr. Bleicher in the way that he did. He expressed genuine contrition and regret in respect of his actions. The Panel is satisfied that the Appellant feels sincere remorse for his serious errors of professional judgement.

(c) The Panel is also satisfied that the Appellant has provided an honest account of events since the inception of the Ethics Committee's investigation, and has cooperated in a prompt and proper manner throughout the investigation and subsequent disciplinary proceedings.

215. While the Appellant's breaches of the FCE were serious and repeated, the Panel does not consider that they are of the same magnitude as the ethical violations that have led to the imposition of bans of three or four years' duration in other recent cases concerning senior FIFA officials. In all the circumstances, the Panel considers that a three-year prohibition on participating in all football-related events is a disproportionate sanction for the violations of Articles 13, 15 and 19 of the FCE 2012 described above.

216. Having regard to the matters listed at paragraphs 209 and 215 above, and having given careful and anxious consideration to the nature of the wrongdoing that the Appellant has been found guilty of, the Panel concludes that a two-year prohibition on participating in any football-related activity represents an appropriate and proportionate penalty.

217. For these reasons, the Panel concludes that the three-year prohibition imposed by the Appeal Committee must be quashed and replaced with a two-year prohibition.

218. Lastly, the Panel notes that the Appellant sought to challenge the order of the Adjudicatory Chamber (which was upheld on appeal by the Appeal Committee) that he must pay CHF 20,000 in respect of the costs of the proceedings before the Adjudicatory Chamber. The Appellant submitted that he was unable to meet these costs, which were excessive and unfair. However, the Appellant did not adduce any documentary evidence relating to his financial means or alleged inability to meet this costs order. In the circumstances, the Panel does not consider that

there is any basis to interfere with the order of the Appeal Committee requiring the Appellant to pay CHF 20,000 in respect of the costs of the proceedings before the Adjudicatory Chamber.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Harold Mayne-Nicholls on 27 February 2017 against the decision of the FIFA Appeal Committee of 22 April 2016 is partially upheld.

2. The decision of the FIFA Appeal Committee of 22 April 2016 is amended as follows:

   a. Harold Mayne-Nicholls is guilty of violating Articles 13, 15 and 19 of the FIFA Code of Ethics 2012.

   b. Harold Mayne-Nicholls is not guilty of violating Article 20 of the FIFA Code of Ethics 2012.

   c. Harold Mayne-Nicholls is banned from taking part in any football-related activity at national and international level for a period of two years from 6 July 2015.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.