



Arbitration CAS 2016/A/4579 Gordon Derrick v. Fédération Internationale de Football Association (FIFA), award of 3 February 2017

Panel: Mr José María Alonso Puig (Spain), President; Mr Romano Subiotto QC (United Kingdom); Mr Nicolas Ulmer (Switzerland)

Football

Denial of eligibility to a candidate for a top position within FIFA

Standing to appeal

Duty of a football official to report the existence of bribes

FIFA discretionary power to determine whether a candidate has an impeccable integrity report

Legal nature of a decision providing for a denial of eligibility

1. In Swiss law it is well established that a party must have a current *“interest worthy of protection”* that can be addressed or rectified by the claims or appeal being made. This principle, under Swiss law, is known as *“Rechtsschutzinteresse”* or an *“intérêt digne de protection”*; it is generally translated into English by the term *“standing”*. Although findings on standing have procedural implications, both CAS jurisprudence and Swiss law consider that the concept belongs to the material conditions of the claim, and that the determination of such standing is therefore generally a substantive determination on the merits. An appellant has demonstrated a sufficient actual and present interest to provide standing for his appeal if he has shown that the reversal of the Challenged Decision would have significant practical and tangible benefits to him going forward. The publicity released related to the appellant’s failure to pass his FIFA eligibility check has actual and potential negative effects on the appellant’s reputation and prospects especially if the appellant continues to be deeply involved in football at a national and regional level. While it is certainly true that the elections to which the integrity check applied are long over, it should be noted that a decision which causes harm to reputation continues to deploy direct or indirect effects, and is not entirely analogous to a decision excluding an athlete or a football club from a specific tournament.
2. A football official has an autonomous duty to report the existence of bribes from a candidate to FIFA presidency to the Secretary General of FIFA, independent from the conduct of said candidate. The failure to do so is clearly irregular regardless of the purpose of the bribes. Such breach cannot be excluded by the fact that there was insufficient evidence to confirm the life ban imposed by FIFA on the candidate to FIFA presidency. Every person with significant duties in organizations related to sports should have an impeccable record.
3. In light of the discretionary power provided for in the FIFA Governance Regulations (FGR) edition 2016, the function of the FIFA Audit and Compliance Committee is not to decide whether a candidate has violated the FIFA Code of Ethics but to determine

whether the person at stake has an impeccable integrity record and to render its opinion on the suitability of the candidate. In this respect, the FIFA Audit and Compliance Committee may conclude that due to his disciplinary record and the ongoing investigation against the official at stake before the FIFA Ethics Committee, the latter does not meet the suitability requirements needed for a high position in the organization.

4. The function of the FIFA Audit and Compliance Committee has the natural consequence that its decisions are not of a disciplinary nature but are rather administrative. As a consequence of the administrative nature of such decisions, the principles of proportionality and presumption of innocence should not be applied. This does not mean that FIFA can proceed in an arbitrary or irrational manner. On the contrary, FIFA has to carry out a proper procedure consistent with the requirements of the FIFA Statutes and the FGR, in order to perform due diligence with respect to the candidate's record and following the mandatory eligibility check for all the candidates in compliance with art. 48 par. 1 d) of the FGR.

I. PARTIES

A. The Appellant

1. Mr. Gordon Derrick (hereinafter, the "Appellant" or simply "Mr. Derrick"), is a national of Antigua & Barbuda and of the United States of America. He is currently the General Secretary of the Antigua and Barbuda Football Association and the President of the Caribbean Football Union.

B. The Respondent

2. The Fédération Internationale de Football Association (hereinafter, the "Respondent" or simply "FIFA"), is the international governing body of professional association football and an association established in accordance with Article 60 *et seq. of the Swiss Civil Code*. FIFA is based in Zurich, Switzerland.
3. Mr. Derrick and FIFA are referred collectively as the "Parties".

II. FACTUAL BACKGROUND

4. This section summarizes the facts that the Panel has identified as most relevant, having examined the Parties' written and oral submissions as well as the evidence submitted and analysed in the course of the proceedings.

i) The professional background of the Appellant

5. The Appellant is a former professional football player of the Antigua & Barbuda national football team.
6. In April 2004, Mr. Derrick was appointed to the position of General Secretary of the Antigua and Barbuda Football Association (“ABFA”). This is the national governing body of football in Antigua and Barbuda. It is a member of FIFA, the Caribbean Football Union (“CFU”), and the Confederation of North, Central America and Caribbean Association Football (“CONCACAF”) (these entities will be described below). Its headquarters are in Antigua.
7. In May 2012, Mr. Derrick was elected President of the CFU. This is the regional governing body of Caribbean football associations and federations. The CFU is comprised of 31 member associations which compete in both CFU and CONCACAF competitions. The CFU’s headquarters are located in Jamaica.
8. In February 2016, the Appellant announced that he would run as candidate for the presidency of CONCACAF. This is the continental governing body for association football in the region. CONCACAF has 41 member associations and is mainly based in Miami, Florida.

ii) The dual candidacy to become the President of CONCACAF and FIFA’s Vice-President

9. As previously stated, in February 2016, the Appellant intended to present himself as a candidate for the position of President of CONCACAF. However, this actually entailed a candidacy for two positions:
 - Firstly, the position of President of CONCACAF.
 - Secondly, the position of FIFA-Vice-President on the FIFA Council, because the President of CONCACAF also serves *ex-officio* as a FIFA Vice-President on the FIFA Council.
10. The election for the CONCACAF President was one of the items on the agenda for the 66th FIFA Congress, which was scheduled to take place on 12 and 13 May 2016 in Mexico City.

iii) The double eligibility check

11. Both of the above positions require the candidates to pass prior eligibility checks in order to be placed on the ballot for the respective elections to each position:
 - Firstly, the CONCACAF Statutes require each candidate for the CONCACAF Council, including the President, to pass an eligibility check.
 - Secondly, the FIFA Statutes and applicable regulations also oblige the candidate to pass an eligibility check in order to be eligible to be a FIFA Vice-President.

12. Thus, the Appellant went through two eligibility checks:

1) The eligibility check by the CONCACAF (March 2016):

- The CONCACAF delegated the task of conducting eligibility checks to a law firm named Sidley Austin LLP.
- The eligibility check was divided into two parts:
 - i. The Appellant was requested to complete an eligibility check questionnaire (the “Questionnaire”). The Appellant was asked to provide information about previous and current proceedings and sanctions. The Appellant filled out the Questionnaire disclosing two specific proceedings (the “Two Proceedings”):
 - a) The Decision of the FIFA Ethics Committee of 17 November 2011 (*a previous proceeding and sanction*)
 - He indicated that he had been found guilty by the FIFA Ethics Committee of an infringement of the FIFA Statutes and the FIFA Code of Ethics in connection with the Mohamed Bin Hammam scandal.
 - In particular, Mr. Derrick was found guilty of infringement of art. 7 par. 1 of the FIFA Statutes (Conduct of bodies and officials), art. 3 par. 1 and art. 3 par. 2 (General rules), art. 9 par. 1 (Loyalty and confidentiality) and art. 14 par. 1 (Duty of disclosure and reporting) of the FIFA Code of Ethics. He was sanctioned with a reprimand and fine of CHF 300.
 - b) The Letter of FIFA Ethics Committee of 6 March 2015 (*a current investigatory proceeding*)
 - He disclosed that the Investigatory Chamber of FIFA opened investigation proceedings against the Appellant with regards to possible violations of the FIFA Code of Ethics.
 - This investigation is still ongoing and it concerns the alleged mismanagement of FIFA funds.
 - ii. The firm mandated the Mintz Group to conduct an integrity check by researching and reviewing public records, media and social media (the “Integrity Check”). The results of the Integrity Check were provided to Sidley Austin LLP in a memorandum of 5 April 2016. It was also found that Mr. Derrick had been sanctioned with a reprimand and fine of CHF 300 in the Mohamed Bin Hammam case.
- The conclusion reached by CONCACAF, based on the Questionnaire and the Integrity Check, was that the Appellant had passed the eligibility check, notwithstanding the negative issues raised. This decision was communicated on 6 April 2016.

2) The eligibility check by the FIFA Audit and Compliance Committee (April 2016):

- According to the FIFA Statutes and the FIFA Governance Regulations February 2016 (“FGR”), the Vice-Presidents and members of the FIFA Council are required to undergo eligibility checks.
- The general rule is that the checks are to be conducted by the Review Committee.
- However, as provided in the FIFA Statutes, the FIFA Audit and Compliance Committee can be (and in this case was) granted the power to conduct the eligibility checks foreseen in the FIFA Statutes until the establishment of the Governance Committee.
- CONCACAF communicated the results of its eligibility check to the FIFA Audit and Compliance Committee on 6 April 2016, as mentioned previously. This eligibility check was carried out in accordance with the FIFA Governance Regulations.
- On that same day, 6 April 2016, the Chairman of the FIFA Audit and Compliance Committee wrote to the Chairman of the Investigatory Chamber of the FIFA Ethics Committee and asked for confirmation as to whether the Appellant was the subject to ongoing proceedings.
- The day after, on 7 April 2016, the Chairman of the Investigatory Chamber of the FIFA Ethics Committee replied to the Chairman of the FIFA Audit and Compliance Committee confirming that the Appellant had previously been sanctioned by the FIFA Ethics Committee in November 2011 and that there were currently ongoing investigatory proceedings against the Appellant in relation to a potential violation of the FIFA Code of Ethics.
- The Chairman of the Audit and Compliance Committee then requested further information to the Appellant and invited him to submit any comments or remarks he considered appropriate.
- The Appellant fulfilled the requirement by providing further information and documents.
- The conclusion reached by the FIFA Audit and Compliance Committee, based on the recommendation (of CONCACAF) and investigations carried out (pursuant to the information and documentation provided by Mr. Derrick), was that the Appellant had not passed the eligibility check. The decision was communicated, both to CONCACAF and the Appellant, on 12 April 2016.

iv) The FIFA Decisions

13. On 12 April 2016, the Audit and Compliance Committee of the FIFA sent two letters to Mr. Derrick with regards to the eligibility checks that were carried out by candidates for the FIFA Council (the “Challenged Decision”).
14. The Audit and Compliance Committee is a standing committee of FIFA. The Audit and Compliance Committee advises and assists the Executive Committee (the executive body of the FIFA, which was renamed as “the Council” as of 27 April 2016) in fulfilling its duties.

15. The Challenged Decision reaches the following conclusions:
 - The first letter states that Mr. Derrick cannot be admitted as a candidate for the election to the office of FIFA Vice-President to be held in May 2016.
 - The second letter establishes that Mr. Derrick cannot be admitted as a candidate for the election to the office of any position on the FIFA Council to be held in May 2016 (neither FIFA Vice-President nor member of the FIFA Council).
16. Ultimately, in light of the Two Proceedings, the Audit and Compliance Committee came to the final decision that the Appellant could not be admitted as a candidate for either election since he had not passed the due eligibility checks.

v) The consequences

17. There are three main consequences of the referenced Challenged Decision:
 - The official announcements of FIFA with regards to Mr. Derrick's non-admission as a candidate:
 - (i) For the office of CONCACAF President.
 - (ii) Nor for the office of FIFA Vice-President.
 - (iii) Nor for the office of FIFA Council.
 - The press releases (of Mr. Derrick or others) and public reactions with regards to the Challenged Decision.
 - Lastly, the ineligibility of the Appellant for any of the positions. This resulted in the Appellant's decision to withdraw from both elections.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 2 May 2016, Mr. Derrick lodged a Statement of Appeal before CAS against FIFA concerning the Decision of the Audit and Compliance Committee of 12 April 2016.
19. On 18 May 2016, the Appellant filed his Appeal Brief.
20. On 27 May 2016, CAS informed Mr. José María Alonso Puig that he had been appointed as President of the Panel in the procedure, that the Appellant had nominated Mr. Romano Subiotto QC as co-arbitrator and Mr. Nicolas C. Ulmer as co-arbitrator.
21. On 29 June 2016, the Respondent requested an extension of the time limit to file its Appeal Brief. That same day, CAS acknowledged receipt of the Respondent's letter and granted the Appellant a deadline until 1 July 2016 to state whether he agrees to the request for an extension or not.
22. On 4 July 2016, CAS informed the arbitrators that the Appellant had not objected to the Respondent's request for an extension to file its answer within the deadline prescribed therein.

The Appellant's silence was considered as an agreement. Thus, the Respondent's deadline to file its answer was extended until 18 July 2016.

23. On 19 July 2016, the Respondent filed its Answer.
24. On 27 July 2016, the Appellant requested a hearing to be held. On that same day, the Respondent sent a letter to indicate that they would leave it to the Panel to determine whether a hearing was necessary.
25. On 31 August 2016, CAS indicated that the time limit to communicate the Arbitral Award to the parties had been extended until 25 November 2016.
26. On 27 September 2016 CAS communicated the scheduling of the hearing for 28 November 2016.
27. On 28 September 2016, CAS communicated that the time limit to submit the Arbitral Award to the parties had been extended until 13 January 2017.
28. On 4 October 2016 the Appellant confirmed having taken note of the scheduling of the hearing and stressed that Mr. Derrick should be heard as a witness, adding that the Appellant reserved the right to provide further evidence, which could not have been obtained beforehand.
29. On 19 October 2016, the Appellant sent to CAS a signed copy of the Order of Procedure. The Appellant did not agree with certain points regarding the costs of the present proceedings. The following two issues were raised:
 - (i) The Appellant did not agree with the application of Article R64 of the Code of Sports-related Arbitration (hereinafter, the "Code") (Paragraph 11.1 Costs). He was of the opinion that the Challenged Decision regarding the Appellant's non-eligibility is of a disciplinary nature; thus, article R65 of the Code should apply instead and the proceedings should be for free.
 - (ii) The Appellant paid a total amount of the advance of costs (Paragraph 11.3 Costs). However, attention is drawn to the fact that the Respondent was never even requested to pay its share of the advance of costs by CAS, by virtue of R64.2 of the Code.
30. On 21 October 2016, the Respondent sent CAS a signed Order of Procedure.
31. On 22 November 2016, the Appellant requested the Panel to allow the submission of new exhibits prior to the hearing.
32. On 23 November 2016, CAS acknowledged receipt of the Appellant's letter and granted the Respondent a deadline until 24 November 2016 to state whether it agrees to the submission of new exhibits. That same day, the Respondent agreed to having the referred exhibits admitted in the file and to allowing the Appellant to supplement his arguments with respect to such new exhibits orally at the hearing, but only to the extent that it is necessary to reply to the Respondent's answer.

33. On 28 November 2016, a hearing was held in Lausanne. Both Parties attended the hearing, duly represented, and Mr. Derrick was heard as a witness. At the end of the hearing the Parties expressed their acceptance of the proceedings and appointment of the tribunal, stating that they had received sufficient opportunity to present their case.
34. On 29 November 2016, the Appellant sent a letter to the Panel concerning the hearing, in which the Respondent had referred to decision 4A_636/2011 of 18 June 2012 of the Swiss Federal Supreme Court (“the Go-Kart Case”), indicating that the factual circumstances of the case are different from the case at hand.

IV. PARTIES’ POSITIONS AND PRAYERS FOR RELIEF

35. The following is a brief description of the Parties’ submissions in this arbitration. It does not depict in detail all of the Parties’ arguments. However, they have all been taken into consideration by the Panel in its deliberations and drafting of the present award.

A. The Appellant: Mr. Derrick

36. On 2 May 2016, Mr. Derrick lodged a Statement of Appeal before CAS against FIFA concerning the Decision of the Audit and Compliance Committee of 12 April 2016.
37. On 18 May 2016, Mr. Derrick filed his Appeal Brief before CAS.
38. Firstly, regarding the legitimate and sufficient interest of the Appellant in the proceeding, despite the fact that the elections of May 2016 have already passed, Mr. Derrick explains how the Challenged Decision has consequences that go far beyond the admission to the elections of May 2016. In this sense, four reasons are mentioned which essentially come down to the professional and reputational consequences of the Challenged Decision:
 - The Challenged Decision blocked a further career of the Appellant in FIFA forever:
 - It serves as a negative precedent against the Appellant for being ineligible for any position within the FIFA.
 - Thus, it has consequences that go far beyond the admission to the elections of May 2016 since they prevent the Appellant from having a career within FIFA.
 - The Challenged Decision put the Appellant’s position as President of the CFU in jeopardy:
 - The non-admission of the Appellant as a potential candidate by a legal body of FIFA due to the results of the eligibility check has created a stigma which affects his position in the CFU. Mr. Derrick is seen as a criminal offender and infringer of FIFA regulations, which results in a loss of support and trust.
 - Furthermore, motions have already been raised in the CFU informally requesting that the Appellant should be forced to resign from his position as the President of the CFU due to the Decisions.

- The Challenged Decision puts the Appellant's position as General Secretary of the ABFA in jeopardy:
 - In the same way as in the CFU, the Appellant has lost support and members have already informally requested that the Appellant should be forced to resign from his position as the General Secretary since FIFA has declared him as not "*fit and proper*" to hold a high position.
 - The Decisions constitute a serious threat to the Appellant's professional career, in particular with regards to his position as member of the board of two banks:
 - The Appellant also pursues a career in the banking sector. In fact, he sits or has sat on the board of directors of two banks: i) the ACB Mortgage & Trust Company, that belongs to the Antigua Commercial Bank, and ii) the Eastern Caribbean Home Mortgage Bank. Both banks requested the Appellant to explain the Decision and, in particular, the ongoing FIFA investigation concerning alleged mismanagement of FIFA funds.
 - In addition, he is director in two companies: i) the energy saving company GDEC Ltd. and ii) of DSC Promotions Ltd.
 - The Decisions raise serious doubts as to whether the Appellant can be trusted with the functions he currently holds. In particular, the accusation of "*mismanagement of FIFA funds*" in the Decisions depicts the Appellant as an embezzler and a criminal and, ultimately, someone that cannot be relied upon.
39. Secondly, with regards to the Challenged Decision the Appellant argues the following:
- Firstly, in terms of the grounds of the Challenged Decision:
 - The Appellant states that it only mentions two reasons for the non-admission of the Appellant as a candidate for the elections, namely the Two Proceedings.
 - Secondly, with regards to the actual eligibility checks:
 - Taking into account the FIFA Regulations, in particular the standard for passing the eligibility check which is determined in Article 1(4) of Annexe 1 of the FIFA Governance Regulations (FGR), the Appellant argues that the misconduct must have a *direct material connection* to the position he holds or for which he is a candidate.
 - Also, he claims that this legal standard establishes that, while the body in charge of the eligibility check has a certain degree of discretion for its decision, it clearly indicates that only *final* decisions shall be taken into account in this check.
 - In addition, the Appellant states that when it comes to the procedure for conducting the eligibility check, the FIFA rules are very limited.
 - Thirdly, specifically in relation to the Two Proceedings:
 - (i) The Decision of the FIFA Ethics Committee of 17 November 2011 (*the previous proceeding and sanction*):
 - The Appellant argues that the decision was not appealable.
 - He also states that this decision was rendered in the context of the alleged bribery by Mohammed Bin Hammam in May 2011.

- Furthermore, the Appellant points to how on 19 July 2012 the CAS annulled the decision issued by the FIFA Appeal Committee against Mohamed Bin Hammam in the award CAS 2011/A/2625, Mohamed Bin Hammam v. FIFA.
 - Thus, essentially, the Appellant claims that the ruling against him should also be reversed.
 - Lastly, the Appellant points to the facts. On the one hand, that the only misconduct was that he did not report the alleged violations of the FIFA regulations to the FIFA Secretary General at the time. On the other hand, that he did not receive any cash gifts or bribes nor did he collaborate with the alleged misconduct of Mohamed Bin Hammam in any way.
 - Hence, given the insignificance of the alleged misconduct of the Appellant, it only resulted in a reprimand and a fine of CHF 300.
- (ii) The Letter of FIFA Ethics Committee of 6 March 2015 (*the current proceeding*):
- The Appellant argues that an investigation proceeding is still open but only regarding *possible* violations of articles 13, 15, 19 and 21 of the FIFA Code of Ethics in connection with records concerning the ABFA.
 - He emphasizes that, up until the present day, he has not yet been informed in anyway (neither in detail nor in general) on the nature and cause of the accusations against him. He has no first-hand knowledge or access to the proceeding.
 - The Appellant draws attention to the fact that it seems that the proceeding must be lingering without any progress since he has only been requested twice to provide documents to the FIFA Ethics Committee.
 - Also, the Appellant states that it is the FIFA Code of Ethics (2012 edition) that applies and, according to said code, the burden of proof lies on the Ethics Committee and the presumption of innocence is also applicable.
40. Thirdly, in terms of the applicable law, despite the references made to the FIFA Regulations, the Appellant also considers that there are breaches of minimal procedural standards that have been established by the Swiss doctrine and case law which must necessarily be observed in this proceeding. In particular: (i) the right to a fair trial; (ii) the right to be heard; (iii) the presumption of innocence; and (iv) the personality rights.
41. As a result, overall, Mr. Derrick requests that the Panel decides in an Award:
1. *Prayer for Relief 1: (...) To annul the Decision of the FIFA Audit and Compliance Committee and to issue a new decision according to which the Appellant passed the eligibility check for the elections in May 2016.*
 2. *Prayer for Relief 2: Respondent shall be ordered not to consider the two alleged misconducts of Appellant as sufficient reason to not pass future eligibility checks of Respondent. (...) Accordingly, Respondent shall be ordered to respect such finding of the Panel also in future.*

With regard to the ongoing investigation (...): In case of a binding decision in that matter that establishes misconduct in the sense of article 1(1) of Annexe 1 to FIFA Governance Regulations of February 2016 of Appellant, Respondent would not be bound by this order.

3. Prayer for Relief 3: (...) Appellant requests that Respondent be ordered to publish, as stated in the prayer for relief, an official media release and distribute it through its ordinary channels of news distribution. (...)

(...) the annulment and the issuance of a new decision need to be communicated by the same channels as the non-admission of Appellant. (...)

Further claims of the Appellant for damages suffered remain reserved.

4. Prayer for Relief 4: Finally, the Respondent should be ordered to bear the costs of the arbitration and to compensate Appellant for attorneys' fees.

42. In addition, the Order of Procedure of the Appellant of 19 October 2016 raised two issues regarding the costs of the present CAS proceeding, these being:
 - (i) The Appellant did not agree with the application of Article R64 of the Code (Paragraph 11.1 Costs). He is of the opinion that the Challenged Decision regarding the Appellant's non-eligibility is of disciplinary nature. Thus, article R65 of the Code should apply instead and the proceedings should be for free.
 - (ii) The Appellant paid a total amount of the advance of costs (Paragraph 11.3 Costs). However, attention is drawn to the fact that the Respondent never even requested to pay its share of the advance of costs by the CAS, by virtue of R64.2 of the Code.

B. The Respondent: FIFA

43. On 18 July 2016, FIFA filed its Answer before the CAS.
44. Firstly, regarding the lack of interest in the proceedings the Respondent's position is based on the following arguments:
 - The Respondent asserts that the Appellant is well aware that his appeal is admissible only to the extent that he has a legally protected and legitimate interest in having the Challenged Decisions under appeal set aside.
 - FIFA stresses that the Challenged Decision that concerns the Appellant's eligibility for elections already took place.
 - Similarly, the Respondent argues that the four independent reasons given by the Appellant with regards to its legally protected and legitimate interest are not convincing.
 - The Respondent contradicts each of the four reasons based on lack of substantiation and evidence:
 1. The Challenged Decision blocks a further career of the Appellant in FIFA forever
 - The Respondent claims that if the Appellant is cleared from the charges concerning the pending ethics proceedings, the Challenged Decisions will have no

impact whatsoever on any further decision. In other words, there is no *quasi res judicata* effect for the future eligibility check.

2. The Challenged Decision puts the Appellant's position as President of the CFU in jeopardy - There is no evidence to support this argument. FIFA considers that it is not established that the Appellant's position is in jeopardy, let alone because of the Decisions under appeal.
 3. The Challenged Decision puts the Appellant's position as General Secretary of the ABFA in jeopardy - The same counterargument is used *mutatis mutandis*.
 4. The Challenged Decision constitutes a serious threat to the Appellant's professional career, in particular with regards to his position as member of the board of two banks – The Respondent claims that the Appellant fails to prove this point and, in any case, the only way of trying to restore the allegedly damaged reputation of the Appellant would be to succeed in the present case on the merits.
- Hence, FIFA submits that the Appeal should be dismissed on a preliminary basis for lack of a legitimate and legally protected interest.
 - Lastly, the Respondent claims that the Appellant's "Prayer for Relief 2" is inadmissible since it goes beyond the scope of the Challenged Decisions under appeal.
45. Secondly, with regards to the Challenged Decision the Respondent argues the following:
- Firstly, in terms of the grounds of the Challenged Decision:
 - FIFA does not accept the main argument of the Appellant on this point with regards to the lack of grounds of the Challenged Decision.
 - The Respondent believes that the decision not to admit the Appellant as a candidate was justified. In particular, FIFA specifies the reasons that support the relevance and required attention that must be drawn to the Two Proceedings, analysed separately and, most importantly, examined jointly.
 - Secondly, with regards to the actual eligibility checks:
 - The Respondent draws attention to the fact that throughout the eligibility check carried out by the FIFA Audit and Compliance Committee it becomes apparent how he did not comply with all of the requests for information and documentation.
 - In particular, it is notable how despite a specific request to provide the entire correspondence with the FIFA Ethics Committee the Appellant did not provide copies of these letters.
 - The Respondent bears in mind the importance of both eligibility checks in the context of the positions at stake. Considering that the requirements and standards regarding candidates' eligibility are identical for candidates for both positions.
 - Lastly, with regards to the applicable standard, the Respondent also identifies Article 1(4) of Annexe 1 of the FIFA Governance Regulations (FGR) as the standard for passing the eligibility check.
 - However, emphasis is added on previous CAS awards that have set that (i) high ranking FIFA officials must appear as completely honest and beyond all suspicion

and (ii) the standard to be applied should be one of “*an impeccable integrity record*”. In this sense, the Respondent believes that it is clear that the Appellant’s candidacy did not meet these standards, which standards cannot and should not be reduced under any circumstance.

- Thirdly, specifically in relation to the Two Proceedings:
 - The decision of FIFA Ethics Committee of 17 November 2011 (*the previous proceeding and sanction*):
 - i. The Respondent states that the Appellant witnessed the circumstances that were under discussion in the Mohamed Bin Hammam scandal.
 - ii. In fact, the Respondent claims that no reporting of the controversial events was made by the Appellant and that he continues to dispute that money was received at all in these meetings.
 - iii. The Respondent claims that in the context of the investigation evidence was introduced with regards to Mr. Derrick’s reprehensible behaviour.
 - iv. As a result of the above, the Respondent highlights the decision issued on this regard by the FIFA Ethics Committee.
 - The Letter of FIFA Ethics Committee of 6 March 2015 (*the current proceeding*)
 - i. The Respondent argues that there are facts that must not be undermined specifically regarding the ongoing FIFA Ethics Proceedings against the Appellant which began on 6 March 2015.
 - ii. The Respondent refers, in chronological order, to the different stages of the proceedings stressing the numerous occasions in which the Chairman of the Investigatory Chamber of the FIFA Ethics Committee has written to the Appellant asking him to provide information and documentation.
 - iii. It is stated that on the first request of the FIFA Ethics Committee, the Appellant apparently provided documentation (on 29 April 2015). However, on the second request, the Appellant wrote seeking clarification on the requests and an extension of the time limit (on 20 March 2015).
 - vi. The Respondent draws attention to the documentation that (i) it is unclear whether and to what extent the Appellant provided the requested documents and (ii) in any case, this documentation was not provided to the FIFA Audit and Compliance Committee or as exhibits to the Appeal Brief of the present proceedings.
46. Thirdly, in terms of the applicable law, despite the references made to the FIFA Regulations, the Respondent considers that the references made to Swiss Law are misplaced. In any case, the Decisions comply both with the FIFA Regulations and Swiss Law. As a matter of fact, FIFA expressly states that its response is based on three specific reasons which essentially question the integrity of the Appellant, these reasons being: (i) No violation of the presumption of innocence or the FGR standard of review; (ii) Principle of proportionality and Personality Rights; and lastly (iii) The Challenged Decision is not arbitrary.
47. As a consequence of the above, FIFA requests that the Panel issues an Award:

- 1) *Declaring the Appellant's appeal inadmissible.*
- 2) *Dismissing the Appellant's requests to the extent they are admissible.*
- 3) *Confirming the Decision under appeal.*
- 4) *Condemning the Appellant to pay all the costs of the present arbitration.*
- 5) *Condemning the Appellant to pay FIFA a compensation for the costs incurred by FIFA before the Court of Arbitration for Sport, to be determined by the Court of Arbitration for Sport.*

48. Lastly, regarding the costs of the present CAS proceeding, the Respondent raised no issues, confirming that it stands by the application of Article R64 of the Code and the Appellant shall, as it has done, pay the total amount of the advance on costs.

V. JURISDICTION

49. Pursuant to art. R47 of the Code:

"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 it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

50. Pursuant to arts. 66.1 and 67.1 of the FIFA Statutes:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, intermediaries and licensed match agents".

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

51. Based on the above, the Panel holds that CAS has jurisdiction to hear this case. Furthermore, no party has raised any objection to the jurisdiction of CAS.

VI. APPLICABLE LAW

52. Pursuant to art. R58 of the Code:

"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

53. In this case, the applicable rules are the FIFA regulations and, in particular, the FGR and the FIFA Code of Ethics. Subsidiarily, pursuant to art. R58 and 66.2 of the FIFA Statutes, Swiss Law is applicable.

VII. PRELIMINARY ISSUE: THE APPELLANT'S STANDING TO SUE AND THE ADMISSIBILITY OF THE APPEAL

54. In Swiss law it is well established that a party must have a current “interest worthy of protection” that can be addressed or rectified by the claims or appeal being made. This principle, under Swiss law, is known as “*Rechtsschutzinteresse*” or an “*intérêt digne de protection*”; it is generally translated into English by the term “*standing*”, and the Panel adopts that term for convenience (although standing can have a somewhat different role when applying English or other Common laws).
55. Although findings on standing have procedural implications, both CAS jurisprudence and Swiss law consider that the concept belongs to the material conditions of the claim, and that the determination of such standing is therefore generally a substantive determination on the merits. See, DE LA ROCHEFOUCAULD E. *Standing to sue, a procedural issue before the CAS*, CAS Bulletin 1/2011, p. 19; ATF 126 III 59.
56. As noted in Section IV above, the Parties have been at odds as to whether the Appellant here retains standing to sue in light of the fact that the appeal concerns the Appellant's eligibility for elections that have already taken place. The Appellant briefed four different arguments which he claimed each demonstrated a current interest worthy of protection sufficient to justify standing. The Respondent, for its part, asserted that none of these reasons were convincing. This debate was reprised at the hearing, and Mr. Derrick also provided testimony in support of his current interest in a finding overturning the decision of the FIFA Audit and Compliance Committee. These arguments and the facts underlying them will be further discussed below.
57. A recent CAS case defined the standing to sue principle as:
- “... a party has standing to sue if it has an interest worthy of protection. This is deemed to be the case if the appellant is factually and directly affected by the appealed decision in a fashion that can be eliminated by its annulment... In this respect, according to Swiss Federal Tribunal jurisprudence: “[a] legally protected interest consists in the **practical use** that admitting the appeal would have for the Appellant... ATF 137 I 40 at §2.3 p.43)” [CAS 2014/A/3855, §§72-73 (emphasis added)].
58. CAS 2013/A/3140 is consistent with the above in stating that “an appellant has to demonstrate that he or she is sufficiently affected by the appealed decision and has a tangible interest, of financial or sporting nature at stake” (Id. at §8.3, emphasis added). In that case, the CAS panel stated that it had “no difficulty” in determining that the football player filing the appeal had standing as the appealed decision would have “practical and important” effects on his future career in football thus creating an “actual interest” in appealing it (Id. at § 8.4). A number of the CAS cases that have not found sufficient actual interest to confirm standing for appeal concerned football clubs or players that were in

some manner excluded from a tournament or championship that had already occurred. See, e.g., CAS 2014/A/3855; CAS 2015/A/4151.

59. The legal standard applied in CAS standing determinations largely echoes that to be found in the case law of the Swiss Federal Tribunal: “[I]’*intérêt digne de protection consiste dans l’utilité pratique que l’admission du recours apporterait à son auteur, en lui évitant de subir un préjudice de nature économique, idéale, matérielle ou autre que la décision attaquée lui occasionnerait*” [4A_134/2012 at §2.1, citing ATF 137 II 40 at §2.3; see also, ATF 137I 23 at § 1.3.1 (exception to present interest when dispute under appeal may arise in analogous circumstances or has a sufficient public interest)].
60. At the hearing the Respondent cited and sought to rely on Federal Tribunal decision 4A_636/2011, an appeal from the so-called Go-Kart case heard before the CAS. The Appellant subsequently submitted the decision, in the original and English translation, and sought to point out that the factual circumstances of that case were quite different from the case at hand. The Panel agrees that this Federal Tribunal case is largely distinguishable from the present one. Notably, in the Go-Kart case, the prior ban and disqualification that was the subject of appeal was found to have become moot, and without tangible interest or effect going forward.
61. Reviewing the argument and evidence submitted by the Appellant, the Panel comes to the conclusion that Mr. Derrick has demonstrated a sufficient actual and present interest to provide standing for his appeal. In particular, the Appellant has demonstrated that the reversal of the Challenged Decision of the FIFA Audit and Compliance committee would have significant practical and tangible benefits to him going forward.
62. The Appellant continues to be deeply involved in football at a national and regional level. The Appellant’s failure to pass his FIFA eligibility check was publicised and widely known and has been shown to have actual and potential negative effects on the Appellant’s reputation and prospects. While it is certainly true that the elections to which the integrity check applied are long over, it should be noted that a decision which causes harm to reputation continues to deploy direct or indirect effects, and is not entirely analogous to a decision excluding an athlete or a football club from a specific tournament.
63. As concerns the specific claims of continuing harm raised by the Appellant, the Panel is not entirely convinced that the Audit and Compliance Committee decision would have a *quasi res judicata effect* blocking any further career moves within FIFA as was argued by the Appellant. The Respondent countered at the hearing that, should the current FIFA investigation of the Appellant be terminated without any finding of wrongdoing on his part then “*it would be a new day*” for Mr. Derrick and the past denial of eligibility would be reviewed in light of violations arising from the Bin Hammam matter. But while the exact precedential effect of the Challenged Decision can be debated, it cannot be gainsaid that a reversal of that decision would put the Appellant in a far better future posture before FIFA, and in the football world generally. This augurs in favour of a finding of an actual practical interest of Mr. Derrick to maintain this appeal.

64. The Appellant also asserts that the Challenged Decision has caused and continues to cause him harm in connection with his service as a bank director; this assertion is disputed by the Respondent as unproven. The evidence before the Panel shows that the Appellant has resigned from Bank board positions, and Mr. Derrick at hearing testified that at least one resignation was at the request of the bank and was clearly linked to the implications of his failure to pass FIFA eligibility requirements. The Panel finds Mr. Derrick's position and testimony on the matter credible.
65. The evidence that the appealed decision was jeopardising Mr. Derrick's position in the CFU/Caribbean Football Union and the ABFA was inconclusive.
66. The Appellant has, however, sustained his essential position that the Challenged Decision causes him both actual and potential problems going forward due to harm to his reputation, and that these problems would be diminished significantly if the appealed decision were reversed.
67. Overall, it follows that the Appellant has demonstrated sufficient continuing practical and tangible interest in reversing the appealed decision to justify his standing to appeal; therefore the appeal is admissible.

VIII. MERITS OF THE DISPUTE

A. FIFA regulations regarding the eligibility check

68. Pursuant to art. 72 of the FGR:
"Candidates shall be required to fulfil the eligibility check in accordance with Annexe 1 conducted by the Review Committee.
2. The Review Committee shall carry out the eligibility check within 21 days of receipt of the respective candidature from the FIFA general secretariat.
3. Based on the eligibility check carried out by the Review Committee, the Review Committee shall pass a decision on the eligibility of the candidate concerned".
69. Accordingly, Vice-Presidents and members of the FIFA Council are required to fulfil eligibility checks generally conducted by the Review Committee.
70. However, pursuant to art. 80 of the FGR:
"The eligibility checks foreseen in the FIFA Statutes and in these regulations shall be conducted by the Audit and Compliance Committee until such time as the Governance Committee is established and shall immediately enter into force with respect to all new members of the bodies to whom such checks apply".
71. Consequently, the FIFA Audit and Compliance Committee has the power to conduct the eligibility checks foreseen in the FIFA Statutes until such time as the Governance Committee is established.

B. FIFA's reasoning to reject the appellant's candidacy

72. FIFA stated that the standard for passing the eligibility check is traceable to art. 1 (4) of Annexe 1 of the FGR:

"In the context of carrying out eligibility checks, the relevant body in charge has a wide margin of appreciation in evaluating and weighing the information gathered with regard to specific individuals. Notwithstanding this, an eligibility check shall, in principle, be deemed as not passed if the individual concerned is found to have committed misconduct that has a direct material connection to the position he holds or is a candidate for".

73. FIFA notes that the relevant body has therefore a wide margin of appreciation in this respect.
74. FIFA states that, due to the high position for which the Appellant was applying, it considered that the applicable standard required an *"impeccable integrity record"*.
75. FIFA finally states (i) that the disciplinary sanction that the Appellant received on 17 November 2011 sufficed to render him ineligible as a candidate for FIFA Vice President, and (ii) that the ongoing FIFA Ethics proceedings against him additionally constituted a basis for finding him ineligible as a candidate for FIFA Vice President.

C. The Panel's decision on the FIFA's reasoning

a) *The previous sanction and the ongoing investigation*

76. The facts described above indicate to the Panel (i) the existence of a sanction imposed on Mr. Derrick by FIFA, dated 17 November 2011, as well as (ii) the existence of an ongoing investigation opened in 2015 against the Appellant before the FIFA Ethics Committee.
77. On 17 November 2011, the FIFA Ethics Committee issued a decision in which it found that the Appellant violated provisions of the FIFA Code of Ethics including those related to loyalty and confidentiality and the duty of disclosure and reporting. In fact, the Appellant was effectively sanctioned for failure to comply with its obligation to provide information regarding irregular contributions, such as deliveries of envelopes with money. The Appellant was found to have violated a number of provisions of the FIFA Statutes and the FIFA Code of Ethics, and in particular art. 7 par. 1 of the FIFA Statutes, art. 3 par. 1, art. 3 par. 2, art. 9 par., and art. 14 par. 1 of the FIFA Code of Ethics.
78. Mr. Derrick states that he was found guilty *"only"* of not reporting alleged violations of FIFA regulations to the FIFA Secretary General. Moreover, the Appellant described the sanction as *"insignificant"*, consisting of a reprimand and a fine of CHF 300.
79. In his defence, the Appellant mentions the award rendered in CAS 2011/A/2625, in which the panel annulled the decision issued by the FIFA Appeal Committee and lifted the life ban that was imposed on Mr. Bin Hammam. According to his own interpretation, if Mr. Bin Hammam was *"acquitted"*, Mr. Derrick cannot be sanctioned for not reporting a violation of FIFA regulations.

80. Under the Panel's view, the relation between the CAS decision in the Bin Hammam case and the sanction imposed on Mr. Derrick by FIFA are not comparable at all. First, the panel did not acquit Mr. Bin Hammam. Rather, the Panel found that it could not be comfortably satisfied that the monies were paid by him *"for the purposes of inducing those members to vote for him in the FIFA Presidential election"*, which was the actual charge made against Mr. Bin Hammam, and for which he received a life suspension (para. 196). It could not be excluded that *"Mr. Bin Hammam gave the money to Mr. Warner as a token of appreciation for setting up the meeting, or perhaps for some assistance given I the past on another matter"* (para. 197).
81. In the light of the foregoing, the panel in the Bin Hammam case was very clear when providing the reasons for its decision, separating the concept of acquittal from the lack of evidence applicable to the case. Hence, the Panel stated the following: *"The Panel therefore wishes to make clear that in applying the law, as it is required to do under the CAS Code, it is not making any sort of affirmative finding of innocence in relation to Mr. Bin Hammam. The Panel is doing no more than concluding that the evidence is insufficient in that it does not permit the majority of the Panel to reach the standard of comfortable satisfaction in relation to the matters on which the Appellant was charged. It is a situation of "case not proven", coupled with the concern on the part of the Panel that the FIFA investigation was not complete or comprehensive enough to fill the gaps in the record"* (par. 204 of the Award, emphasis added).
82. Thus, in the Bin Hamman case, the panel found that it was not sufficiently proven that the money was paid for the purposes of inducing the recipients to vote for him in the FIFA Presidential election and, it could not therefore confirm the decision issued by FIFA sanctioning him for bribery and corruption in connection with the FIFA presidential elections. However, this does not mean that the Appellant did not have the duty to report the existence of the bribes to the Secretary General of FIFA. Thus, Mr. Derrick's action was clearly irregular, regardless of the purpose for which the money which was distributed in envelopes to several members of CONCACAF that were attending the meeting. In other words: Mr. Derrick had an autonomous obligation, independent from Mr. Bin Hammam's conduct, consisting of the duty to report the existence of the bribes to the Secretary General. Under the Panel's view, Mr. Derrick's duty was certainly breached, and this breach cannot be excluded by the fact that there was insufficient evidence to confirm the appealed decision in the Bin Hammam case.
83. In addition, during the hearing the Appellant relied before the Panel on the so-called *"Villar Case"*, stating that Mr. Ángel María Villar, president of the Spanish Football Federation and Vice-President of the FIFA, was in that case sanctioned with a fine and a reprimand in November 2015 for violating the FIFA Code of Ethics for football officials in the context of the investigations carried out by the then chairman of the FIFA Ethics Committee relating to existing offers for the 2018 and 2022 World Cups, which were finally awarded to Russia and Qatar.
84. Regarding the so-called *"Villar Case"*, which was first mentioned in this arbitration during the hearing, the Panel stresses that an eventual discrimination against the Appellant should have been proven in a more persuasive manner. No evidence was presented in this respect nor any FIFA decision adduced. The Panel is mostly aware of this case through the media. Hence, it is

the Panel's view that (i) the fact that a similar set of facts took place in the "*Villar case*" were mere allegations made during the hearing, (ii) the Panel has no certainty about the similarity of these two cases and (iii) cannot therefore base its reasoning on grounds or circumstances that it ignores.

85. With respect to the ongoing investigation of Mr. Derrick before the FIFA Ethics Committee, the Appellant is right in stating that it has not yet come to any conclusion. However, and without any aim from the Panel of prejudging the Appellant's investigation by the FIFA Ethics Committee, it should be noted that the subject matter of the investigation relates to *prima facie* violations of some of the most serious provisions of the FIFA Code of Ethics and, in particular, to mismanagement of FIFA funds. Moreover, it appears that serious questions persist as to whether the Appellant is being very collaborative with FIFA in this investigation.
86. In the light of the above, it is the Panel's understanding that every person with significant duties in organizations related to sports should have an impeccable record. This position is not new within CAS, and it has been recently reaffirmed that "*an integrity test as to whether a person, based on the information available, is perceived to be a person of integrity for the function at stake*" (CAS 2015/A/4311, par. 57). In CAS 2011/A/2426, the Panel stated that "*officials as highly ranked as the Appellant must under any circumstance appear as completely honest and beyond any suspicion. In the absence of such clean and transparent appearance by top football officials, there would be serious doubts in the mind of the football stakeholders and of the public at large as to rectitude and integrity of football organizations as a whole*". The Panel fully concurs with these statements.
87. Moreover, due to the recent events that happened in the past years with respect to football organizations, and in particular with FIFA, it has become necessary to increase and enhance the checks and controls of the potential high officials that operate in these organizations. The ongoing prosecution and investigation of some of the former highest officials, including FIFA's former President, in Switzerland and in the United States further highlights the special duty of care that the organization should develop and apply in the selection process of its officials. Logically, these circumstances have had an impact on the fact that FIFA is especially careful with the selection of the persons who can hold positions of responsibility as, in the case at hand, the Vice-Presidency of FIFA.
88. In order to develop these checks and controls, FIFA in February 2016 approved the FGR, which provides the relevant body with a wide margin of appreciation in order to carry the eligibility check and to determine whether a candidate is suitable to hold the highest positions within the organization, such as the Vice Presidency and membership of the Council.
89. In the light of this discretionary power, it is not the function of the FIFA Audit and Compliance Committee to decide whether a candidate has violated the FIFA Code of Ethics but to determine whether the person at stake has an impeccable integrity record and to render its opinion on the suitability of the candidate.

90. FIFA concluded that due to the previous sanction and the ongoing investigation, the Appellant does not meet the requirements necessary to become Vice-President of the FIFA, and the Panel agrees with its decision.

b) The nature of the Challenged Decision

91. Another point that the Panel must address is the legal nature of the Challenged Decision on which these proceedings have been grounded. In this respect, it is the Panel's view that it is an administrative decision and not a disciplinary one.
92. As stated before, it is not the function of the FIFA Audit and Compliance Committee to decide whether a candidate has violated the FIFA Code of Ethics, but to determine whether the candidate has an impeccable integrity record. This fact has the natural consequence that the Challenged Decision is not of a disciplinary nature but rather is administrative.
93. As a result, in this case, the relevant body of FIFA (the FIFA Audit and Compliance Committee) had the duty, under FIFA's own regulations, to analyse and check the record of the candidate and decide on the grounds for its findings. This is what FIFA has done, finding that, due to his disciplinary record and his ongoing investigation, the Appellant does not meet the suitability requirements needed for a high position in the organization.
94. As a consequence of the administrative nature of the Challenged Decision, the principles of proportionality and presumption of innocence should not be applied as argued by the Appellant. This does not mean that FIFA could proceed in an arbitrary or irrational manner. On the contrary, it is the Panel's view that FIFA did carry out a proper procedure consistent with the requirements of the FIFA Statutes and the FGR, in order to perform due diligence with respect to the candidate's record and following the mandatory eligibility check for all the candidates in compliance with art. 48 par. 1 d) of the FGR.
95. To conclude, the Appeal filed by Mr. Derrick shall be dismissed and the Challenged Decision shall be confirmed. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr. Gordon Derrick on 2 May 2016 is dismissed.
2. The decision rendered by the FIFA Audit and Compliance Committee on 12 April 2016 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.