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FIFA WORLD CUP

Investigations Own Goal

The growing conflagration over the investigation by world football governing body FIFA into the awarding of hosting rights for the 2018 and 2022 World Cups increasingly looks like a textbook case of how not to conduct an ethics probe.

The rift between former U.S. Attorney Michael Garcia, who led the investigation, and FIFA Ethics Committee Chairman Hans-Joachim Eckert over the contents of Eckert's summary findings last week, has raised accusations of a whitewash and brought further scorn on the reputation of FIFA. Earlier this week, FIFA asked Swiss authorities to launch a criminal inquiry into the circumstances surrounding the bidding process.

How did things go so badly wrong?

Andrew Durant, Head of Forensic Investigations for FTI Consulting, notes that the eruption of new chaos at FIFA offers some important lessons about what went wrong in this case, and what best practice might look like.

Investigators need to be unmarked

The first lesson concerns the scope of the investigatory powers granted at the outset. Credible investigations need the power of inquiry and the ability to obtain relevant documents. In the FIFA case, the lack of subpoenas meant that potential targets, staff and other witnesses who were unwilling to cooperate could not be compelled to do so. In addition, it appears that documents were handed to the investigators, which is likely to have resulted in some pre-selection. Best practice is for the investigators to "seize" a wide population of potentially relevant documents and to whittle them down to key documents.

Speed is of the essence

The speed at which an investigation is carried out is central to its success. Any delays between the issues coming to light and the investigation commencing means it is more likely that memories will fade and documents will be misplaced, lost or destroyed. The allegations of corruption first surfaced in a Sunday Times article in October 2010 some four years before the summary report was published. And Garcia was appointed in July 2013 and appears to have commenced the investigation in or around October 2013.



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Field of play should be broad

The next point involves the potential depth of the investigation, including the number and range of witnesses interviewed, and the way in which interviews are carried out. There are several observations that can be made here:

- The investigation comprised just 75 interviews, including many of the 24 country representatives of the football governing body. Given that the inquiry related to eleven bidding countries (in nine groups), far in excess of 100 interviews might have been expected.
- Any comprehensive investigation will involve interviews of junior staff, including personal assistants and members of the team at all levels. Junior members of staff often provide insights that senior staff cannot, and they can flag up the whereabouts of key documents and other evidence. In the case of the FIFA investigation, the number of junior staff interviewed appeared to be thin on the ground.
- The most effective interviews are those that are conducted face-to-face so that interviewers can, amongst others things, read and assess body language and ask follow up questions as the interview unfolds. In the case of the FIFA probe, many interviews took the form of written Q&As, giving respondents the advantage of careful preparation.



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Tenacity required in acquiring data

If FIFA investigators were restricted in the scope of witnesses they were able to interview, then they were even more limited in the range of information to which they could access. In particular:

- Just 200,000 documents, mostly in hard copy form, formed the basis of the football body's inquiry, a surprisingly narrow pool of information. In the digital age, there is an expectation that e-mails and other electronic documents – including drafts of the hard copy documents that were evaluated as part of the investigation – would be available.
- Computers containing information crucial to the FIFA investigation were destroyed, and they were apparently not able to obtain back-up copies of information kept by individuals, on server tapes, or on the cloud and other remote data systems. At the very least, best practice suggests that future inquiries use greater tenacity and perseverance to access data.

Whistle-blowers, Gifts and Independence

There are several other lessons that can be learned from the FIFA experience, the first of which is the importance of engaging with whistle-blowers, encouraging them to talk and protecting their identities if they do engage. Those referred to in the FIFA probe appear to have been castigated, not a useful precedent for future investigations. One wonders how many were turned away, or who decided to keep their "head below the parapet"?

In addition, given that corruption became a key focus of the FIFA investigation, rules on gifts and entertainment appear to deserve much closer scrutiny than they received in the report. This offers another learning point for future investigations.

Finally, one of the basic rules of setting up an investigative committee (in this case the "chamber") is that members should be independent. The chamber should also report to individuals who are, again, independent. This clearly was not true in the case of FIFA, where conflicts arose in many areas.

Conclusion

The FIFA investigation was meant to restore the organisation's reputation and underscore a sense of fairness. So far it appears to have failed on both counts. Future investigatory bodies should take note.

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