

Cricket's Ball-Tampering Scandal: 10 Lessons for Financial Services

A recent sports scandal provides helpful guidance for current efforts to improve conduct and culture in the financial services industry.

Introduction

The Australian cricket team is coached by a popular ex-player, Darren Lehmann. He has brought a no-nonsense approach to running the team focused on his “been there, done that, worn the t-shirt” attitude. The captain of the Australian cricket team is a sporting superstar, Steve Smith. He is well on the way to establishing himself as the second best batsman ever to have played the game. The vice-captain is a combative cricketing star, David Warner. Warner has earned a level of notoriety for previously participating in off-field brawls, and for being unpopular with opponents.

Indeed, the approach of the Australian team has recently been so aggressive towards its opponents that reports have suggested some Australian ex-players and fans have begun to be alienated by the “win at all costs” approach, despite the team’s success on the field. The team itself is in some transition, and a number of new players are in the side for the first time, trying to establish themselves. One of these new players, Cameron Bancroft, was recently caught using a piece of sandpaper to alter the condition of the cricket ball during a test match against South Africa. This action is a clear breach of both the rules and the ethics of the game, and was apparently planned by Warner with the knowledge of Smith, but carried out by Bancroft.

An ex-cricketer, Fanie de Villiers, who works for a South African broadcaster, became suspicious and instructed the TV cameramen to follow the ball and players closely. The cameras then picked up what had occurred. Lehmann became aware of the issue. Bancroft hid the offending piece of sandpaper down his trousers, and when challenged by the umpires, produced a sunglasses cleaning cloth. However, the true story emerged shortly afterwards, the players confessed, and all received lengthy bans. In particular, Smith and Warner are amongst Australia’s highest-paid sportsmen, and have forfeited valuable sponsorship contracts and the chance to earn more than US\$1 million for seven weeks’ work playing in the Indian Premier League this year. Their professional reputations are in ruins.

How did this happen and what does it demonstrate about human behaviour? Further, how might this scandal relate to the financial services industry’s current efforts involving conduct and culture?

Lesson 1: Managers who still act like players create risk for the team.

In many businesses, senior management roles are held by those who have worked their way up. Managers need to move on from being “one of the gang” — many managers miss the day-to-day action, and cannot fully remove themselves from it. A Senior Manager who is unable to do so poses some risks — by being too close to what is going on, or by reminiscing about the tricks that they used to play back in the day — and may set the wrong tone.

Lesson 2: Fostering a superstar culture is dangerous.

Superstars in the midst of businesses can be difficult to control. How can a business ensure they are subject to the same (or perhaps more) scrutiny as other employees? Might others be tempted to emulate that level of performance? Which comes first — the performance of the individual, or the team? And what might superstars do in order to maintain their levels of success?

In this case, Smith — the superstar captain of the Australian cricket team — is widely considered a level-headed individual who is popular with colleagues and opponents. By many accounts, his conduct in condoning the ball sanding surprised those who knew him. But managing superstars clearly has its challenges.

Lesson 3: The tone from the middle is as important as the tone from the top.

In a cricket team, the role of vice-captain is somewhat akin to a middle-management role. Vice-captains are expected to play an important role in the dressing room, and in integrating new players. Indeed, they will usually be experienced and successful players themselves, who can represent junior members of the team before the management. In the early stages of conduct and culture initiatives, many financial services regulators focused on the tone from the top, but more recent evolutions — such as the Financial Conduct Authority’s (FCA’s) recent Discussion Paper on Culture — have focused on the importance of the tone from the middle. (More information on the Discussion Paper is available in [this Latham & Watkins Client Alert](#).) If junior staff members misbehave, it is unlikely to be because they have seen the CEO doing so. More likely, junior staff members may be following the example of the head of their desk, whom they have seen cutting corners. Middle management plays a key role in shaping the overall conduct of junior team members.

In this case, the vice-captain (Warner) asked the rookie (Bancroft) to do something that the latter must have known violated the rules and spirit of the game — nonetheless, Bancroft agreed. Had mid-level seniority set the right tone, this scandal likely would not have happened.

Lesson 4: Do not tolerate a “win at all costs” culture.

Many businesses like winning — it makes them money. But a “win at all costs” culture clearly brings dangers. Such a mindset focuses on short-term objectives, such as winning the next pitch or producing better quarterly results than a key competitor. If an organisation always has to win, and that mindset becomes part of the organisation’s culture, then the organisation may cut corners when a competitor legitimately challenges that supremacy. Indeed, in the short term, accepting the “you win some, you lose some” mentality may benefit long-term performance.

The ball-tampering affair is an example of prioritising short-term performance. Australia clearly wanted to win that particular game against South Africa. The team appears to have been prepared to do anything to achieve this short-term objective. But in the long term, that one test match would not have defined the careers of either team or any of the players. Focusing on the short term, not the long term, has led to ruined reputations for the individuals involved. Had they been able to accept short-term defeat, the long-term prospects for the team would have been far rosier.

Lesson 5: People do not always feel capable of blowing the whistle.

Many conduct and culture initiatives focus on the importance of whistleblowing. Whom can prospective whistleblowers turn to if they are concerned about a course of action? In this case, Bancroft may have felt as though he could not say “no” to Warner. However, Bancroft likely wishes, in retrospect, that he could have approached someone else in order to say, “I have been asked to cheat”. In this case, which involved a close-knit dressing room, on tour in a foreign country, doing so was presumably difficult. However, the affair could have been handled entirely differently had Bancroft felt able to blow the whistle.

Whistleblowing not only requires an environment with the right procedures in place, but also a culture where individuals feel able to speak out.

Lesson 6: Senior management may be unaware of the prevailing culture.

In this case, the coach (Lehmann) says he was not aware of the plan that his players had hatched. To some extent, that does not matter: Lehmann would have found himself in a bad situation either way. Taking responsibility for the overall conduct of staff, and culture within an organisation, is now commonplace with the focus on senior management accountability (for example, consider the UK’s Senior Managers and Certification Regime). Certainly, there is a difference between awareness and responsibility. Nonetheless, this case provides an example of what may become a growing trend in the financial services industry: the firing (or resignation) of senior managers because of a problem that occurred on their watch, of which they were unaware.

Lesson 7: Monitoring is best done by the right people.

Within organisations, people with a wide variety of backgrounds undertake risk monitoring. Indeed, in a world of big data, great analytical skills are probably imperative. But in some ways, assigning the monitoring to someone who used to do what is being monitored is unbeatable — a classic poacher-turned-gamekeeper. In this case, de Villiers was an ex-player who worked for a South African broadcaster. He instructed camera crews to watch Bancroft carefully. Indeed, he had performed at the very highest levels as a player, and was considered something of an expert in the bowling skills that the Australian team was trying to manipulate. The ball-tampering may have been identified in any event. But it is instructive that an ex-player was the individual who became suspicious. This case provides an excellent example of why it is beneficial for someone with inside knowledge of the activity in question to undertake the monitoring.

Lesson 8: Don’t take explanations of misconduct at face value.

It is interesting that when first challenged, the players came up with a seemingly plausible explanation to the umpires on the pitch. The players claimed that the incident was all a big misunderstanding, and the item in question had been a sunglasses cleaning cloth, which Bancroft produced from his trousers. In other circumstances, that strategy might have worked; however, such a scenario was unlikely at a sporting occasion where cameras surrounded the ground. Nonetheless, this case provides a helpful example of an attempt to pull the wool over the eyes of those responsible for monitoring. If there is either an intellectual or experience mismatch between the monitors and those they are supervising, “getting away” with misbehaviour might be possible. It is important to follow up on suspicions, and not necessarily to accept first explanations.

Lesson 9: People do the stupidest things.

Many market abuse investigations face the following conundrum. A highly paid individual is suspected of breaching the rules. The gain from the breach is very small, in the context of the overall profitability or pay of the individual involved. That is often seen as evidence that it is unlikely that the individual committed, or

at least intended to commit, the offence — why would they risk so much? In fact, the reality lies in a common saying: “People do the stupidest things”. That is not to suggest that the individual’s long-term success has been entirely based upon breaking the rules. However, when a culture exists that requires success at all times, individuals may be prepared to risk everything — that deferred pay-packet, their reputation, and so on — for inordinately small gains. The parallel here is instructive. The financial rewards for winning that game were irrelevant in the context of the impact that the affair has had on the reputations, future earnings, and sporting success of the individuals involved.

Lesson 10: Beware of teams focused on the rules, not the principles.

In cricket, ball-tampering is a classic “grey area”. Players are allowed to alter the condition of the ball by, for example, rubbing it on their trousers, but they are not allowed to alter the condition of the ball artificially. At various times, players have been accused of (or have openly admitted to) everything from wearing trousers with interesting zips to rub the ball on, to sucking sweets to produce sticky saliva in order to transfer that saliva onto the ball. It isn’t truly clear where exactly the line between legitimately polishing and artificially altering a ball is drawn. There are some understandings amongst players as to what is, and is not, acceptable conduct. It is probably fair to say that the use of sandpaper is universally considered inappropriate and a breach of the rules. But such behaviour is also clearly a breach of the principles — as might be deliberately rubbing the ball on the zip of a pair of trousers rather than the fabric.

The point, however, is this: people can always try to work around the rules. They need to understand both the rules, which specifically restrain their behaviour, and the principles, which guide how they should act, and judge their behaviour by both standards.

Conclusion

Interesting parallels can be drawn between this sporting scandal, and culture and conduct in financial services. If a compliance officer is struggling to come up with a catchy example to emphasise the importance of conduct and culture to a sea of faces on a trading floor, cricket ball-tampering might be one place to start.

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