

BEFORE THE WORLD SAILING INDEPENDENT APPEAL PANEL
IN THE MATTER OF
AN APPEAL BY MR KIM ANDERSEN

DECISION OF THE INDEPENDENT APPEAL PANEL

**(Chairman Mr David Hunt Q.C.
Ms Venetia Bennett
Mr Vidushpat Singhania)**

Introduction

1. This is an appeal by Mr Kim Andersen against a decision (“the Decision”) of the Ethics Commission (“the Commission”) made on 8 October 2020. The Decision had the effect of upholding an earlier decision of the Commission made on 18 August 2020 rejecting Mr Andersen’s challenge to the Opinion of Mr Josep Pla dated 31 July 2020, in which Mr Pla had upheld a complaint (“the Complaint”) made against Mr Andersen by Mr Gary Jobson and Mr Scott Perry, and had issued a warning to Mr Andersen.

The Commission

2. The Commission was established pursuant to Reg.8.14.1 of the World Sailing Regulations (“the Regulations”). Reg.8.14.2 provides:

“[The World Sailing] Council shall appoint the members of the Commission on the nomination of the Board. There shall be at least seven members of the Commission, including at least two members of the Constitution Committee.”

Under the title “Terms of Reference”, the Regulations continue:

- “8.14.6 The Commission shall report to the Board, except where any issue or report concerns a member of the Board, in which case the Commission shall report to Council.
- 8.14.7 The Commission may adopt its own rules of procedure to govern its meetings and operations.
- 8.14.8 The Commission shall:
- (a) promote ethical behaviour within World Sailing and the sport of sailing generally;
 - ...
 - (c) carry out investigations and adjudicate on complaints submitted under the World Sailing Code of Ethics;
 - ...
 - (f) appoint and remove Ethics Officers.”

The factual background

3. On Monday 2 March 2020 Mr Andersen, the then President of World Sailing, caused a letter bearing the electronic signatures of Mr Jobson and Mr Perry, both then Vice-Presidents of World Sailing, to be emailed to Mr Tom Ehman. Mr Ehman had presented his Sailing Illustrated show number 265 on his Facebook channel on 18 February 2020. The letter complained that the show had contained misleading and inaccurate information regarding World Sailing; more particularly the letter alleged that Mr Ehman had specifically mentioned Mr Jobson and Mr Perry as the source of this misleading and inaccurate information. The allegation that Mr Ehman had mentioned Mr Jobson and Mr Perry as the source of his information was incorrect, which unfortunately lead to a number of comments in the media critical of World Sailing.
4. Mr Jobson and Mr Perry immediately complained that their signatures had been added to the letter of 2 March 2020 without their authority; specifically they alleged “the

unauthorised use by [Mr Andersen] on World Sailing ... letterhead of their respective electronic signatures". Following a number of exchanges between Mr Andersen on the one hand and Mr Jobson and Mr Perry on the other, on 22 April 2020 Mr Jobson and Mr Perry submitted the Complaint against Mr Andersen to the Commission. At that date the Commission consisted of the following seven members, namely Dr Dieter Neupert, Mr Manuel J. Martin, Mr Ser Miang Ng, Ms Jo Keen, Mr Nicolas Hénard, Mr Úlfur Hröbjartson and Ms Helen-Mary Wilkes. Although the name of Mr John Faire still appeared on the website of the Commission at that time as a member, he had in fact resigned on 24 October 2019. (This information regarding Mr Faire's resignation, and the information regarding subsequent resignations from, and appointments to, the Commission referred to below, has been confirmed to the Panel by World Sailing.)

5. At the end of April 2020 the Commission appointed Mr Pla as Ethics Officer to investigate the complaint in accordance with Reg.36.5(a) and on 2 May 2020 Mr Pla emailed Mr Andersen informing him, inter alia, of the appointment. Between 4 and 18 May 2020, Mr Andersen and Mills & Reeve on his behalf emailed a number of formal objections to the appointment of Mr Pla as the Ethics Officer on the basis that he was clearly not independent or impartial. As part of these objections, they filed a witness statement from Mr Patrick Singleton, the Executive Officer of the World Olympians Association, who stated that in January 2020 Mr Pla and Mr Miang appeared to be openly assisting Mr Gerardo Seeliger, a rival candidate to Mr Andersen in the election for the position of President of World Sailing which was to take place in the autumn of 2020. These objections, were, however, rejected by the Commission as set out in emails from Dr Neupert, then its Acting Chairman, to Mills & Reeve dated 16 and 19 May 2020.

(For the record, we have seen no minutes of this or any other of the meetings of the Commission mentioned in our Decision.)

6. In an email to Dr Neupert of 20 May 2020, copied to among others Mr Andersen, Mr Jobson and Mr Perry, Mr Hénard announced his resignation from the Commission in these terms:

“I am not comfortable with the recent shift and the political use of solicitation. Between -1- the necessary solidarity with the ethics committee in such cases and -2- the lack of confidence in the recent decisions of the ethics committee, I prefer to resign from the ethics committee.”

This resignation reduced the membership of the Commission to six. As of that date, therefore, the Commission ceased to be quorate. In a further email dated 26 May 2020 to the members of the Commission, Mr Hénard explained that:

“To be crystal clear, my resignation is directly linked to the current choice of the EO. I was in favor of an ethics officer “100% not politically involved” and this was, for me, obviously not the case.”

7. Mr Pla produced his Opinion on 31 July 2020. He upheld the Complaint on the basis that Mr Andersen had contravened sections 1.2(a), 1.3(e) and 1.8(a) of the World Sailing Code of Ethics (“the Code”). His decision was to impose the sanction of a warning under section 1.10(b) of the Code and thereafter take no further action. For the sake of completeness we add that Mr Pla also made certain, but more limited, criticisms of both Mr Jobson and Mr Perry.
8. On 6 August 2020 Mills & Reeve wrote to the Commission to provide Mr Andersen’s response to Mr Pla’s Opinion. They asserted on the first page of their letter that:

“Our Client considers the Opinion to be flawed, biased and one-sided. For the reasons set out below, our Client’s fears at the outset that he would not receive an independent and impartial decision from Mr Pla have proven to be justified.”

Under the heading “Conclusions” Mills & Reeve stated:

“In summary, we consider that Mr Pla’s conclusions in the Opinion are either flawed or have regrettably overstepped the remit given to him as [the Ethics Officer] in this investigation. We request that the conclusions in the Opinion should be considered by the Ethics Commission in that context.

All the issues identified in this letter only serve to confirm why a truly independent and impartial Ethics Officer should have been appointed instead of Mr Pla in the first place.”

9. On 17 August 2020 Mills & Reeve emailed Dr Neupert as follows (emphasis as in the original):

“We note that according to the World Sailing website, there are 8 members of the Ethics Commission:

1. John Faire
2. Dieter Neupert
3. Manuel J Martin
4. Ser Miang Ng
5. Jo Keen
6. Nicolas Henard
7. Ulfur Hrobjartson
8. Helen-Mary Wilkes.

We understand that Mr Faire has not been a member of the Ethics Commission for a few years now as he unfortunately had to stand down for health related reasons. Further, as you would be aware, Mr Nicolas Henard resigned from the Ethics Commission during the course of proceedings of Complaint One [Mr Jobson’s and Mr Perry’s complaint] due to the obviously political nature of the Ethics Officer appointed in that matter.

It has now been brought to our attention that another member of the Ethics Commission has also resigned. Accordingly, it appears that there are now only 5 members of the Ethics Commission.

In that regard, we note that Regulation 8.14.2 of the World Sailing Regulations state[s] (emphasis added):

“... *There shall be **at least seven members of the Commission**, including*

at least two members of the Constitution Committee.”

As there are less than 7 members of the Commission, **it follows that the Ethics Commission is - at present - improperly constituted pursuant to the World Sailing Regulations.** Indeed it appears that the Ethics Commission has been improperly constituted from the moment Mr Henard resigned on 26 May 2020.

This has obvious consequences for our client in relation to ... Complaint One ..., namely:

- With respect to Complaint One, it is unclear how the Ethics Commission can render a final decision on the matter given the improperly constituted Commission.

...

Accordingly, we respectfully request World Sailing / the Ethics Commission to clarify how the above issues will be resolved...”

The further resignation referred to in Mills & Reeve’s email was, we assume, that of Ms Keen who had resigned on 12 August 2020. Accordingly as of that date there were only five members of the Commission. The same day, 17 August 2020, Dr Neupert emailed a pithy response to Mills & Reeve saying:

“3. At the moment all decisions of the Commission are being taken unanimously or at least without any vote against - thus in my opinion the rights of any Complainants under the Code of Ethics must prevail over these formalities.”

10. The following day, 18 August 2020, the Commission issued its decision in the following terms:

“DECISION

1. APPLICATION RECEIVED

On 6 August 2020, amended by mail on 12 August 2020, the lawyers of Kim Andersen submitted that the pending Report from the Ethics Commission to the Council should not only include the Decision of the Ethics Officer Joseph M Pla, but also the entire case file and the comments of the Complainee.

2. CONSIDERATIONS

According to Reg.36.11, the Decision of the EO shall be communicated to the parties and the Ethics Commission. Under Reg.8.14.6 the Commission has to report the outcome of a case under the Code of Ethics to the Council if a member of the Board is concerned.

The Commission is therefore not at liberty to alter or amend the Decision of the EO. On the other hand, the confidentiality order is automatically lifted, once the case has been closed which means that the parties will be free to publish the Decision with their comment.

3. DECISION

Therefore the applicant's request is herewith denied.

This decision is final and binding and the Report of the Commission to the Council will therefore be communicated without any Annexes or comments."

The Decision bears Dr Neupert's signature as Acting Chairman of the Commission and is dated 18 August 2020.

11. Dr Neupert reported Dr Pla's Opinion to the Board in a letter bearing his signature but dated 17 August 2020, which read as follows:

"Dear Council

As required by Regulation 8.14.6, I am writing to you to inform you of the outcome of a case under the Code of Ethics concerning the President (a member of the Board).

The complaint was made by Mr Gary Jobson and Mr Scott Perry against Mr Kim Andersen - as there was no WS CEO in office at the time, the complaint was sent directly to the acting chairman of the Ethics Commission.

The Commission appointed Mr Josep M Pla, the President of the European Sailing Federation EUROSAF. Mr Pla was provided administrative support by the staff of World Sailing.

The role of the Ethics Officer is to investigate the complaints and he may then either take no action, issue a warning, or charge individuals with a breach of the Code of Ethics. Any charges are heard before the Ethics Commission.

In summary, the Complainants based their complaint on the alleged fact that a letter was sent to Mr Tom Ehman from Sailing Illustrated using the Complainants' electronic signatures without either of their permissions.

Following his investigation, the Ethics Officer has filed a full report with the Ethics Commission which you will find as Annex to this Report. Mr Pla has concluded to issue a warning to Mr Andersen and thereafter to take no further action in the sense of Reg. 36.10 lit b).

The case has accordingly been closed against Mr Andersen and I report as such to Council.”

(Dr Neupert has not explained how he could have been reporting to the Board on 17 August 2020 a decision that was dated the following day but nothing would appear to turn on this discrepancy.)

12. On 19 August 2020 Mr Hròbjartson resigned from the Commission, reducing the membership to four.

13. Mr Andersen took issue with Dr Neupert's response of 17 August 2020 referred to in the final sentence of para.9 above, so on 9 September 2020 Mills & Reeve wrote to the Constitution Committee of World Sailing pursuant to Reg.6.2.3(i) of the Regulations. Having summarised the position regarding membership of the Commission, Mills & Reeve posed three questions, which the Constitution Committee answered in its Interpretation 003-20 dated 14 September 2020 in these terms:

“Question 1

Do the Regulations require the Ethics Commission to have a minimum of 7 members in order to be properly constituted?

Answer 1

Yes. As Regulation 8.14.2 provides that ‘There shall be at least seven members of the Commission...’ (emphasis added), it is clear that the minimum number of members required for the Commission to be properly constituted is 7.

Question 2

Can the Ethics Commission act and/or make any decisions when they have less than 7 members?

Answer 2

No, the Commission cannot act and/or make any decisions which are decisions of the Ethics Commission for the purposes of the Constitution or Regulations when it has less than 7 members. If the Commission has less than 7 members, it may only meet informally.

Question 3

If decisions are made by the Ethics Commission when it has less than 7 members, are those decisions valid and enforceable?

Answer 3

The .Constitution Committee cannot answer questions about whether any particular decision or act is valid or enforceable. The Committee can only interpret the Constitution and Regulations as it has above.”

14. On 18 September 2020 five new members of the Commission were appointed, namely Mr Peter van den Bossche, Ms Adrienne Greenwood, Ms Lorenz Walch, Mr Abdel Karim Derouiche and Ms Ashley Tobin. Accordingly as of that date the membership of the Commission was increased to nine and the Commission became quorate once again.
15. In a letter from Mills & Reeve dated 25 September 2020 to Mr David Graham, the Chief Executive Officer of World Sailing, Mr Andersen filed his own complaint against Dr Neupert and Mr Miang. Mr Andersen alleged that Dr Neupert had violated the Code in four respects, and Mr Miang in one. (By this time Mills & Reeve were describing the Complaint as “Case 2”.) The four violations alleged against Dr Neupert were:
 - (1) “Appointment of Joseph Pla as Ethics Officer in Case 2, despite a clear conflict of interest”;
 - (2) “Continuing to act as Chairperson of an improperly constituted Ethics

Commission”;

- (3) “Failure to respect the principle of confidentiality”; and
- (4) “Perpetuated a falsehood that our client was trying to ‘get rid’ of the Ethics Commission”.

The single violation alleged against Mr Miang was described as:

“Failed to disclose a clear conflict of interest with respect to the appointment of Joseph Pla as Ethics Officer in Case 2”.

16. In the light of the decision of the Constitution Committee, Mills & Reeve emailed the Commission on 28 September 2020, copied to Mr Graham. They asserted that everything that occurred in the Complaint, namely the confirmation of Mr Pla’s appointment as Ethics Officer, the issuing of his Opinion and the Commission’s decision of 18 August 2020, occurred only after the Commission became improperly constituted. Mills & Reeve therefore suggested that the only suitable recourse was to restart the Complaint afresh, with a new Ethics Officer being appointed to investigate the matter. They did not copy Dr Neupert or Mr Miang into this email as they considered both individuals to be conflicted from acting as a result of the Mr Andersen’s complaint against them. Given these conflicts of interest, Mills & Reeve requested that the other, non-conflicted members of the Commission should decide on their request.
17. We pause to record that the assertion by Mills & Reeve that the confirmation of Mr Pla’s appointment occurred after the Commission became inquorate is incorrect. As we have set out above, Mr Pla’s confirmation occurred on 16 and/or 19 May 2020; Mr Hénard did not resign until 20 May 2020.

18. Mr Graham having forwarded Mills & Reeve’s email to Dr Neupert, Dr Neupert emailed Mills & Reeve on 2 October 2020, copied to the other members of the Commission including Mr Miang. Dr Neupert began his email by describing Case 2 as “forgery of a letter”. He went on to reject the suggestion of any conflict of interest on the part of himself or Mr Miang and he asked Mills & Reeve to clarify what Mr Andersen was requesting from the Commission. Mills & Reeve responded in an email of 5 October 2020. After thanking Dr Neupert for his email they wrote:

“At the outset, we wish to express our grave concerns that you have classified Case 2 as “*forgery of a letter*”. We note that the allegations against our client in Case 2 were not classified as forgery by the complainants, nor did Mr Pla’s report conclude that there was any forgery. Therefore it appears that you have unilaterally decided to make the very serious allegation of forgery (a criminal act) against our client ...”

Mills & Reeve went on to reiterate their request that the non-conflicted members of the Commission should decide on Mr Andersen’s request to start the Complaint again afresh.

19. In the interests of accuracy, the Panel notes that the only suggestion of a forgery made by either of the complainants was addressed by Mr Pla at para.46 of his Opinion, as follows:

“On 22/05/2020, the [Ethics Officer] separately interviewed [Mr Perry] and [Mr Jobson]. [Mr Jobson] mentioned the signature used under his name on the letter sent to [Mr Ehman] had been forged. Although not in the Complaint, the [Ethics Officer] undertook to investigate the allegation.”

The Opinion dealt with this issue at para.55, in these terms:

“On 10/06/2020, the [Ethics Officer] and [Mr Jobson] exchanged emails regarding [Mr Jobson’s signature]. It surfaced that a few years ago [Mr Jobson] had given his consent to his name being applied to a document he needed to sign and this “signature” had been scanned and kept, and then used in the letter sent to [Mr Ehman]. [Mr Jobson] was satisfied with the clarification.”

20. In the meanwhile, Ms Tobin had resigned from the Commission on 4 October 2020,

reducing the Commission to eight members.

21. On 8 October 2020 Dr Neupert emailed Mills & Reeve providing them with a copy of the Decision. The Decision, signed by Dr Neupert as Chairman of the Commission and dated 8 October 2020, reads as follows (emphasis as in the original):

“1. APPLICATION RECEIVED

On 28 September 2020, the lawyers of Kim Andersen submitted that both Complaint Proceedings should be declared null and void, meaning that both Proceedings should be “started afresh” with “New Independent Ethics Officers” in due course.

2. CONSIDERATIONS

- According to Reg. 36.5 the Ethics Officer (EO) is appointed by the Ethics Commission (EC), will conduct the investigation within the framework of the Regulations and finally present his/her findings/decision to the Ethics Commission and the Parties.
- In **Case 2** the ... EO Josep M. Pla, President of EUROSAF was appointed by the EC on 29 April 2020 and presented his decision on 31 July 2020 under Reg.36.10 lit b) with a Warning.
- *As this decision was not appealed in any form, the EC then – after waiting for 2 weeks – **closed the case and reported accordingly to Council** (Reg. 8.14.6) on 17 August 2020.*

...

The Commission has therefore no Jurisdiction to intervene, in Case 2 because it is closed ...

3. DECISION

Therefore the applicant’s request is herewith denied.”

22. The email of 8 October 2020 itself read:

“Please find enclosed the Decision of the Ethics Commission dated 8 October

2020 (which was passed by the Commission with 7 votes in favour, 1 against and no abstention).”

23. Mills & Reeve served Mr Andersen’s Notice of Appeal against the Decision by a letter to the Judicial Board dated 9 October 2020.
24. On 23 November 2020 Ms Wilkes resigned from the Commission. Three days later, on 26 November 2020, Mr van den Bossche and Ms Greenwood resigned, whereupon the Commission again ceased to be quorate. Then on 4 December 2020 Mr Miang resigned. This left only four members of the Commission, namely Dr Neupert, Ms Walch, Mr Martin and Mr Derouiche.
25. Finally, on 22 December 2020 the remaining four members of the Commission were removed from office by the World Sailing Council and replaced with 11 new members, with Mr Graham McKenzie as the Chair.
26. For ease of reference, we attach to this Decision as Appendix 1 a table setting out the composition of the Commission from time to time during 2020. In summary, the Commission was not quorate from 20 May to 18 September 2020, and again from 26 November until 22 December 2020.

The legal framework of this appeal

27. Reg.36.19 provides that:

“There is a right of appeal from a decision of Ethics Commission to the Judicial Board which shall be heard under Part G of Regulation 35 (except that the Judicial Board shall appoint an Independent Appeal Panel to hear and adjudicate on the appeal).”

28. Reg.35.8, entitled “Part G – Appeals and Reviews of Other Decisions made by or within World Sailing”, reads:

“35.8.1 The provisions of this Part of this Code apply to any appeal or review of any decision made within or by World Sailing where the World Sailing Constitution or Regulations expressly permit any such appeal or review.

35.8.2 Any appeal or request for a review shall be made in writing to the Chief Executive Officer within the relevant time limit specified in the World Sailing Constitution or Regulations, or if no such time limit is specified, within fourteen days of the notification of the decision being appealed or reviewed.

35.8.3 The Chief Executive Officer shall pass the appeal or request for review to the Judicial Board, who shall, within fourteen days of receipt, appoint an Independent Panel to hear and determine the appeal or review.

35.8.4 Rules of Procedure published by the Judicial Board shall apply to the conduct, determination and hearing of the appeal or review by the Independent Panel.

35.8.5 World Sailing and Participants hereby agree to respect and be bound by the decision of any Independent Panel, subject only to the right of appeal set out in Part H of this Code.”

29. By Rule 16.2 of the Judicial Board Rules of Procedure (“the RoP”), which by Reg.35.8.4 apply to this appeal:

“Proceedings under these Rules shall be governed by the law of England and Wales unless otherwise determined by the Independent Panel.”

None of the parties requested us to determine otherwise and we do not do so. We therefore apply the law of England and Wales to the determination of this appeal.

The procedural history

30. On 8 December 2020 Dr Katie Smith, the Registrar to the Panel, emailed Mills & Reeve, Dr Neupert and Ms Walch informing them of the appointment and constitution of the Panel and enclosing by way of service on the Commission Mr Andersen's Notice of Appeal. Although dated 9 October 2020, World Sailing accepted the Notice of Appeal as having been delivered on 4 December 2020 for the purposes of RoP.10.5. The five days allowed under RoP.4.2 to any party to challenge any Panel member passed without any such challenge.
31. The Notice of Appeal, after setting out the background facts and the legal basis for an appeal to the Judicial Board, challenged the validity of the Decision on three separate grounds, namely
- (1) that the complaint was not "closed";
 - (2) that Dr Neupert and Mr Miang, both of whom voted on the decision, had a conflict of interest; and
 - (3) that the Decision contained no rationale or analysis.

The orders sought at section D of the Notice of Appeal were as follows (emphasis as in the original):

- I. To set aside the Appealed Decision;
- II. To send this matter back to the EC, and to order only the non-conflicted EC members to render a decision on our Client's request to restart the matter afresh by appointing a new, independent EO to investigate the matter;
- III. To order the EC to issue a properly reasoned decision regarding our request in D.II above...

IV. To order that Mr Neupert and Mr Miang are recused and excluded from participating in any discussions by the EC regarding this matter, due to their clear and flagrant conflicts of interest.”

32. On 20 December 2020 Dr Neupert emailed asking the Panel to dispense with the seven member requirement in Reg.8.14.2 as “part of a smooth hand-over to the new Commission”. In an email of 24 December 2020 Mills & Reeve objected to this request. In addition, it having come to the attention of the Panel that Mr Miang had resigned from the Commission, Mills & Reeve confirmed in the same email that Mr Andersen no longer pursued his claim for an order against Mr Miang as set out in section D.IV of the Notice of Appeal.

33. On 4 January 2021 Dr Smith, on the instructions of the Panel, emailed Dr Neupert (among others) inviting him:

“to identify by noon on Friday 8 January 2021 the relevant provisions of the World Sailing Regulations (or of any other rules or regulations of World Sailing) upon which [the Commission] relies:

- (a) as granting a power to dispense with the requirement in Reg. [8.14.2] of a minimum of seven members of the EC; and
- (b) as conferring jurisdiction on the Panel to exercise any such power of dispensation as identified under (a) above.”

(It was not until later the same day that the Panel became aware that the Commission had been reconstituted on 22 December 2020.) In an email of 6 January 2021, Mr McKenzie as the Chair of the newly constituted Commission confirmed that the Commission had no objection to any of the members of the Panel, and did not pursue Dr Neupert’s request for a dispensation from Reg.8.14.2. Accordingly it became unnecessary for the Panel to rule on Dr Neupert’s dispensation application.

34. The following day Mills & Reeve emailed that since Dr Neupert was no longer a member of the Commission, Mr Andersen no longer pursued the relief sought in section D.IV of the Notice of Appeal against him. (This meant that section D.IV fell away in its entirety.)

In the same email Mills & Reeve confirmed that:

- (1) the Notice of Appeal could be treated as Mr Andersen's Statement of Appeal for the purposes of RoP.5;
- (2) Mr Andersen did not wish to call any witnesses; and
- (3) Mr Andersen was content that the Panel should reach its decision on the documents without the need for an oral hearing.

35. In an email from Dr Smith of 8 January 2021 the Panel informed Mr McKenzie that the 28 days under RoP.6 for the service of any Reply by the Commission would expire on 4 February 2021. On 14 January 2021, however, Mr McKenzie responded by email as follows:

"The newly constituted EC [met] for the first time last night. The Panel no doubt recognises that the EC membership is now entirely new. It does not have the required knowledge of the basis on which decisions were made and courses of action taken by the previous EC members from [whose] decisions this Appeal occurred.

The EC accordingly does not propose to file a Reply with particulars to the notice of Appeal which is noted as having been accepted as the Statement of Appeal. To the extent that the Panel may wish to obtain further information on any particular aspects of the Statement of Appeal the EC is willing to endeavour to assist.

The EC accepts that the Appeal can be considered on the documents as filed and does not seek a oral hearing.

Please note that the above approach should not be seen as any acknowledgement of any allegations made by the Appellant of the former EC. The intention is to leave it up to the Appeal Panel to proceed to decide the Appeal on its merits."

36. On 19 January 2021 Mr Jobson and Mr Perry emailed Dr Smith in the following terms:

“The undersigned have just learned that Mr. Kim Andersen filed an Appeal to the Judicial Board of World Sailing against a Decision of the Ethics Commission (EC) dated 8 October in which the EC stated that they lacked jurisdiction because Complaint 2 (“unauthorized use of signatures”) had been reported as closed to the Council of World Sailing. We further learned that the Judicial Board has appointed an Independent Panel to hear the Appeal without even informing the undersigned who are the complainants in Complaint 2.

We therefore ask you to register us as Respondents in the Appeal since we are the original Complainants and any decision without granting us the right to be heard will violate our basic rights and the principles of due process.”

The Panel acceded to the request of Mr Jobson and Mr Perry as set out in an email from Dr Smith dated 25 January 2021, as follows:

“The Panel record that neither Mr Andersen nor the EC oppose the application.

The Panel are satisfied that they have jurisdiction under Rules 7 and 10 of the World Sailing Rules of Procedure to grant the application. The Panel also consider that, although the present appeal does not relate to the merits of Mr Jobson’s and Mr Perry’s original complaint against Mr Andersen, they both have a sufficient interest, even if only indirect, in the outcome of the present appeal to make it right and proper that they should be joined as Respondents. Accordingly the Panel grant the application, and Mr Jobson and Mr Perry are now Respondents to the appeal alongside the EC with immediate effect.

For the avoidance of doubt the Panel endorse the observations by Mr Sethna [of Mills & Reeve] in his email of 1049 on 22 January. The fact that the Panel have acceded to the application of Mr Jobson and Mr Perry does not in any way affect the scope of the present appeal as set out in the notice of appeal. The present appeal remains an appeal by Mr Andersen against the validity of the decision of the former EC dated 8 October; it is not, the Panel repeat, an appeal on the merits of Mr Jobson’s and Mr Perry’s original complaint against Mr Andersen.”

Mills & Reeve having indicated that Mr Andersen remained content to treat his Notice of Appeal as his Statement of Appeal, the Panel in an email from Dr Smith of 26 January 2021 informed Mr Jobson and Mr Perry that they had until 22 February 2021 to serve their Reply pursuant to RoP.6.

37. On 6 February 2021 Dr Neupert emailed to Dr Smith in the following terms (emphasis as in the original):

“Although you informed us that the old Ethics Commission (EC) as not any longer the Respondent of record, I herewith submit the Reply as *Amicus Curiae* because the new EC is abstaining from taking a position (alleging they do not know anything about the Case) - thus preventing a decision by the Judicial Board *by default*

Thank you for admitting this timely brief ...”

Attached to his email of 6 February 2021 were a two page Reply signed by Dr Neupert and dated 7 February 2021, and a small file of documents. (Again the unexplained discrepancy in dates is of no relevance.)

38. It was not, of course, for Dr Neupert to appoint himself as an *amicus curiae* to the Panel, so the Panel treated his email as an application to be allowed to fulfil that role. The Panel having considered his application, Dr Smith on the Panel’s instructions responded by an email of 8 February 2021 which read as follows:

“The Panel decline your request to act as *amicus curiae* and do not admit your brief (to adopt the wording of your email), for the following reasons.

- (1) The Judicial Board Rules of Procedure, which govern the conduct of this appeal, contain no express provision allowing the appointment of an *amicus curiae*.
- (2) Insofar as Rule 10.1 allows the Panel to determine its own procedure, the Panel refuse to allow you to act as *amicus curiae*.
- (3) It is clear from your email that what in reality you wish to do is to take it upon yourself as the former Chair of the Ethics Commission (“the EC”) to argue the case for the EC because you are unhappy with the position in this appeal adopted by the EC as currently constituted. It is, however, for the EC as currently constituted, and as represented in this appeal by its current Chair Mr McKenzie, to decide upon the position to be adopted by the EC, not for you.
- (4) More generally, what you wish to do as described in (3) above is inconsistent with the role and function of an *amicus curiae*.”

In the light, however, of representations from Mr McKenzie and from Mr Jobson and Mr Perry, the Panel agreed to read the attachments to Dr Neupert's email on the basis that the weight to be given to such attachments would be a matter for the Panel.

39. The small file of attachments added nothing to the documents already submitted with the Notice of Appeal. The main part of Dr Neupert's Reply did not take issue with any of the background facts set out in the Notice of Appeal, nor did it address the second and third grounds set out in the Notice of Appeal. Instead he asserted that the appeal should be rejected on the basis that (emphasis as in the original):

“REASONS (RoP 6.1.a):

I. *The appealed Decision*

1. The <<Decision>> of the Ethics Commission (EC) dated 8 October 2020 is not an appealable decision in the sense of Reg.36.19 because it does not concern sanctions according to Reg.36.16 - 36.18
2. The Ethics Officer (EO) closed the Case on 31 July 2020 according to Reg.36.10 b)
3. The EC reported this outcome to the Council on 17 August 2020 after having waited more than 14 days for an eventual Appeal by the Appellant
4. Therefore the EC stated in its <<Decision>> dated 8 October 2020 just that it had no jurisdiction because the case was closed with the silent Approval of Council
5. Just for good orders sake please note that the EC was fully operational until 5 January 2021

II. *Late appeal*

As the Appellant chose not to react to the Decision of the EO nor to the Report of the EC to Council, the Appeal dated 9 October is late anyway (Reg.35.8.2) and shall therefore not be heard

CONCLUSION

- *NO CHARGES - NO APPEAL (not in July and not in October 2020)*”.

The Reply went on to list seven witnesses (six former members of the Commission and Mr Pla), whose evidence Dr Neupert requested should be given at a public hearing, but without any indication of what evidence such witnesses might give relevant to the Reasons or Conclusion set out earlier in the Reply.

40. On 17 February 2021 Mr Jobson and Mr Perry emailed Dr Smith to inform the Panel that they did not intend to serve any Reply to the Notice of Appeal.

41. On 19 February 2021 Dr Smith emailed the parties, copied to Dr Neupert, as follows:

“Having considered the present position, the Panel propose to proceed as follows.

(1) The attachments to Dr Neupert’s email [of 6 February]

It seems to the Panel that the supporting documents referred to in Dr Neupert’s Reply dated 7 February 2021 do not add anything to the documents already submitted with the notice of appeal. As for the Reply itself, since the Panel have refused Dr Neupert’s application to be joined in the appeal as an *amicus curiae* he has no right to call witnesses, so the final 2 paragraphs of his Reply headed “Witnesses” and “Hearing” can be ignored. That leaves only the paragraphs headed “Reasons” and “Conclusions”. If the Appellant wishes to respond to anything said in these paragraphs, he has until 4.30 pm on Friday 26 February 2021 to do so.

(2) The Panel’s decision

The Panel assume that in the light of their email of 17 February Mr Jobson and Mr Perry do not now intend to take any active part in the appeal. More particularly the Panel note that they have not made any request for an oral hearing under Rule 11.1 of the Judicial Board Rules of Procedure. Accordingly with effect from the beginning of March 2021, the Panel will proceed to their decision on the basis of the written evidence as already submitted, as indicated in my email of 19 January to Mr McKenzie and Mills & Reeve....

If any of the parties object to any of the proposals set out above, they are to email me by no later than 4.30 pm on Wednesday 24 February 2021 detailing their objection(s).”

None of the parties objected to the Panel's proposals.

42. Also on 19 February 2021 the Panel emailed the Judicial Board through Ms Kendall Harris seeking an extension under RoP.10.5 of the three month time limit for the issue of its decision in this appeal. In early March the Judicial Board acceded to this request and extended the time limit to 3 May 2021.

43. On 26 February 2021 Mills & Reeve emailed Dr Smith with Mr Andersen's response to Dr Neupert's Reply. On 1 March 2021 Dr Neupert emailed Dr Smith what he described as his "second submission" to Mills & Reeve's email. In an email of 11 March 2021 Dr Smith informed the parties of the extension granted by the Board. In the same email she informed Dr Neupert:

- "The Panel has instructed me to respond to your email of 1 March as follows.
- (1) You have no such right as you suggest to add a second submission. Rule 9.1 of the Rules provides that unless the Panel directs otherwise, "the parties shall not submit further written argument(s) after the time limit for the submission of the Statement of Appeal or the Reply as the case may be". You, of course, are not a party but since the Panel determines its own procedure under Rule 10.1, the Panel applies the same restriction to you.
 - (2) In any event the comments in your email of 1 March, which the Panel has read and to which the Panel will attach the weight it considers to be appropriate, add nothing new to your "Brief" submitted on 6 February, so your second submission needs no response from the Appellant."

The Panel's jurisdiction to hear this appeal

44. We have set out in para.28 above the provisions of the Regulations governing Mr Andersen's appeal. *Prima facie*, it would appear that the appeal falls within those

provisions. But it seems from Dr Neupert's Reply that he is challenging the Panel's jurisdiction to hear this appeal on two grounds, namely

- (1) that the Decision is "not an appealable decision in the sense of Reg.36.19"; and
- (2) that the Notice of Appeal is "late anyway (Reg.35.8.2)".

We take each ground in turn.

(1) The Decision is not an appealable decision

45. Dr Neupert contends that the Decision is not appealable because "it does not concern sanctions according to Reg.36.16-36.18". We reject that contention for the simple reason that the wording of Reg.36.19 contains no limitation on the categories of decision that are appealable and we see no reason why any such limitation should be implied. The Decision is clearly a decision of the Commission for the purposes of Reg.36.19; indeed the word "decision" appears three times in the Decision document.

(2) The Notice of Appeal is late

46. The Notice of Appeal was, as Dr Neupert recognised, filed on 9 October 2020. Since the Decision was dated 8 October, and was sent to Mills & Reeve the same day, the Notice of Appeal was "made in writing within fourteen days of the notification of the decision being appealed or reviewed" pursuant to Reg.35.8.2. We do not understand how Dr Neupert can contend otherwise.

47. For the sake of completeness we address Dr Neupert's comments at para.II of his Reply dated 7 February 2021. Contrary to Dr Neupert's assertion that Mr Andersen "chose not to react to the Decision of the EO nor to the Report of the EC to Council", Mr Andersen
- (a) did react to Mr Pla's Opinion (dated 31 July 2020) in the form of Mills & Reeve's letter to the Commission dated 6 August 2020; and
 - (b) did react to the Commission's report to the Council (dated 17 August 2020) in the form of Mills & Reeve's application to the Constitution Committee on 9 September 2020 and their subsequent letter to the Commission dated 28 September 2020.
48. Accordingly we reject both of the grounds relied on by Dr Neupert. The Panel has jurisdiction to hear this appeal.

The issue on this appeal

49. The Panel emphasises that the issue, and the only issue, on this appeal is whether the Commission's Decision of 8 October 2020 was valid. This appeal is not concerned with the merits of the original Complaint by Mr Jobson and Mr Perry against Mr Andersen, or with the correctness of the decision of Mr Pla in his Opinion. Likewise this appeal is not concerned with the merits of Mr Andersen's challenge to the Opinion. If this appeal fails, the result will be that Mr Pla's Opinion will stand, in which case our view of the merits of the challenge would be irrelevant. Conversely, if the appeal succeeds, then it will be for the newly constituted Commission to revisit Mr Andersen's challenge to the Opinion and to decide upon his challenge afresh. Again, therefore, our view of the merits

of the challenge would be irrelevant. Accordingly we do not express, and must not be taken as expressing, any view on the merits of either the original Complaint or of Mr Andersen's challenge to the Opinion.

50. We take in turn the three grounds set out in the Notice of Appeal.

(1) The complaint was not "closed"

51. We have had some difficulty with Dr Neupert's repeated use of the word "closed", starting with his letter of 17 August 2020 to the Board, then in the Decision and finally in his Reply, but our starting point has to be the wording of the Decision itself.

52. The Decision states that Case 2 (the Complaint) was closed by the Commission in August 2020 because, after waiting for two weeks, Mr Pla's decision was "not appealed in any form". But, as Mills & Reeve correctly, in our view, point out in the Notice of Appeal, this assertion is misconceived for at least two reasons.

53. First, the reason, and the only reason, given in the Decision for the Commission closing the case in August 2020, namely that after two weeks Mr Pla's Opinion had not been appealed in any form, does not stand examination. As Mills & Reeve point out in the Notice of Appeal, the Regulations, and in particular Reg.36, do not contain any provision for an appeal properly so-called against the imposition of a warning. Mr Andersen had, however, already challenged the Opinion in the form of Mills & Reeve's letter to the Commission of 6 August 2020. It follows that, adopting the words of Sedley J. in R. v.

Parliamentary Commissioner for Administration ex parte Balchin [1996] EWHC Admin.152 (at para.27), the reason given in the Decision for closing the case “does not add up ..., there is a error of reasoning which robs the decision of logic.”

54. In fairness to Dr Neupert it seems to us that he has also used the word “closed” in another and different sense, summarised in the following sentence from para.2 of the decision of 18 August 2020:

“The Commission is therefore not at liberty to alter or amend the Decision of the EO.”

Dr Neupert seems to be making the same point in his second submission, where he said:

“as there were no charges [laid in Mr Pla’s Opinion] the EC did not have to decide anything anymore afterwards (especially not when Josep Pla presented his decision on 31 July 2020).”

In short, Dr Neupert appears to be contending that the Commission had no option in August 2020 but simply to rubber stamp Mr Pla’s Opinion as it stood.

55. We have no hesitation in rejecting that contention. We do so by reference to three, entirely hypothetical examples.

Example 1

56. Unknown to the Commission or to the individual against whom the complaint in question has been made, at the time of his appointment to investigate the complaint the Ethics Officer has a close personal or financial relationship with the complainant, such as would clearly disqualify him from acting as Ethics Officer. The Ethics Officer completes his

task, and delivers a report upholding the complaint and issuing a warning to the individual in question. The day after the report is issued to the Commission, the Commission becomes aware of the Ethics Officer's close personal or financial relationship with the complainant.

Example 2

57. In clear breach of the *audi alteram partem* rule, the duly appointed Ethics Officer makes no contact whatsoever with the individual against whom the complaint was made and makes no effort to discover what that individual's response to the complaint might be. In due course he delivers his report to the Commission based solely on the complainant's version of events, upholding the complaint and issuing a warning to the individual in question. It is clear from the report itself that the Ethics Officer has breached the *audi alteram partem* rule.

Example 3

58. The Ethics Officer is appointed to investigate complaint X. He does investigate complaint X, but it is also clear from his report that he has, despite the protests of the individual against whom complaint X has been made, expanded his enquiries so as to cover a number of wholly unrelated incidents which reflect badly on that individual. It is clear from the Ethics Officer's report as delivered to the Commission that he has taken those unrelated incidents into account in reaching his decision both to uphold the complaint and to issue a warning to the individual in question.

59. We have no doubt that in each of these examples the Commission would, pursuant to its responsibility under Reg.8.14.8 to “adjudicate on complaints submitted under the [Code]”, have a duty to reject the report of the Ethics Officer as fundamentally flawed. It is not for us to decide or prescribe the extent of the Commission’s powers under that Regulation or more generally, both because no argument has been addressed to us on the point and because it is not necessary for us to do so. It is sufficient for the purposes of this appeal to recognise that an Ethics Officer’s report is not sacrosanct as Dr Neupert appears to be arguing. On the contrary, the Commission has both the power and the duty to intervene if a decision of an Ethics Officer can be shown to be flawed. We therefore hold that in whichever sense Dr Neupert argues that the Complaint was “closed” by virtue of the decision of 18 August 2020, his argument fails.
60. Second, the Commission had no power to “close” the Complaint on 18 August 2020 because it was not then quorate. On 12 August 2020 it had been reduced to only five members. As the Constitution Committee ruled in its Interpretation of 14 September 2020, the Commission could not act or make any decisions which were decisions of the Commission for the purposes of the Constitution or Regulations when it had less than seven members; it could only meet informally. The decision of 18 August 2020 was, as we have already held, clearly a decision of the Commission for the purposes of the Regulations. In particular it was a decision in the context of the Commission’s duty under Reg.8.14.8(c) to “adjudicate on complaints submitted under the [Code]”. To adjudicate means to rule on an issue judicially. But, since the Commission was not quorate, it had no power to adjudicate, or rule judicially, on the Complaint. Accordingly the decision of 18 August 2020 was null and void.

61. We have not overlooked Dr Neupert's assertion at para.5 of the Reasons in his Reply that "the EC was fully operational until 5 January 2021". Leaving aside the fact that Dr Neupert had ceased to be a member of the Commission on 22 December 2020, it may well be that the Commission had continued to be fully operational in an administrative sense during the periods in 2020 when it was not quorate. As the Constitution Committee recognised, the Commission could continue to meet informally. But the fact that the Commission may have continued to operate does not validate its decision of 18 August 2020.
62. Accordingly we find that Mr Andersen has established the first ground of his appeal.

(2) Dr Neupert and Mr Miang had a conflict of interest

63. It is apparent from Dr Neupert's email of 8 October 2020 recording the votes on the Decision that all eight members must have taken part in the meeting that day (whatever form that meeting may have taken in the light of the Covid 19 pandemic) at which the Decision was taken. Dr Neupert has never suggested that he or Mr Miang recused themselves from whatever discussions took place within the Commission during that meeting. Indeed given Dr Neupert's forceful rejection in his email of 2 October 2020 of Mills & Reeve's suggestion of a conflict of interest arising from Mr Andersen's complaint against him and Mr Miang, and given that Dr Neupert himself signed the decision, we have no hesitation in concluding that Dr Neupert chaired the Commission's deliberations on 8 October 2020 and that Mr Miang also took part in them. We also know from Dr Neupert's email that all eight members of the Commission voted, with

seven in favour and one against. It follows that at least one of Dr Neupert and Mr Miang must have voted in favour of the Decision.

64. Mr Andersen had lodged his complaint against Dr Neupert and Mr Miang on 25 September 2020. As for Dr Neupert, the first allegation was as follows:

“1 *Appointment of Joseph Pla as Ethics Officer in Case 2, despite a clear conflict of interest*

On 30 April 2020, Mr Pla was appointed by the Ethics Commission as the EO in Case 2.

Our Client repeatedly objected to this appointment on the basis that Mr Pla was clearly not independent or impartial to the parties involved.

We filed a formal objection to Mr Pla’s appointment and submitted a witness statement from Patrick Singleton ..., who confirmed that Mr Pla was openly assisting Gerardo Seeliger (a rival candidate to our Client for the World Sailing Presidency) in the upcoming October 2020 election.

In addition, it had been publicly reported that only a month prior to his appointment (i.e. on 22 March 2019) Mr Pla had sent a strongly worded letter to our Client complaining about what he considered to be “*a growing concern about the course WS is taking in its relationship with its Members*” ...

It was plainly obvious therefore, that Mr Pla’s appointment as an EO in this matter was entirely inappropriate as he was neither independent nor impartial – indeed he was exactly the opposite. It is noteworthy that Mr Pla failed to disclose these conflicts of interest when he was appointed, and also did not dispute the contents of Mr Singleton’s statement at any point.

All of the above should have given Mr Neupert cause to reconsider the decision to appoint Mr Pla. Instead, all of our Client’s objections were simply dismissed by Mr Neupert with scant disregard – even going so far as to request our Client to “*refrain from further interference with the procedure*” ...

Ultimately, Mr Pla’s appointment as the EO in this matter directly resulted in the resignations of 3 members of the Ethics Commission (Nicolas Henard, Jo Keen and Úlfur Hröbjartson). All 3 resigned in protest of the inappropriate manner in which Mr Neupert had been running the Ethics Commission and Mr Henard specified that his resignation was a direct result of the political nature of Mr Pla’s appointment as EO in Case 2 ... We note that the 3 resignations also resulted in

negative press for [World Sailing] and left the Ethics Commission with insufficient members to carry out any further functions.”

65. Turning to Mr Miang, Mills & Reeve set out Mr Andersen’s complaint against him as follows (emphasis as in the original):

“1 ***Failed to disclose a clear conflict of interest with respect to the appointment of Joseph Pla as Ethics Officer in Case 2***

As noted above, Mr Pla was appointed as the EO in Case 2.

Whilst Mr Pla was conflicted and should not have been appointed as the EO as explained above, Mr Miang who is a member of the Ethics Commission had his own conflict of interest which he too failed to disclose.

As explained in Mr Singleton’s witness statement ..., it appears that Mr Miang has been actively supporting Mr Seeliger to oust our Client as [World Sailing] President in the upcoming election (emphasis added):

*“Our interaction and conversation in the lounge lasted a few minutes, after which **Gerardo [Seeliger], Josep [Pla] and Gerard [Esteva] all left to sit at their own table** in a different part of the lounge. However, they were directly in my eye line so I could see them sitting together. Their meeting went on for perhaps 15 minutes and **eventually they were also joined by Ser Miang (IOC Member)**, who I assume was attending IOC meetings in Lausanne at the time. I recall that their four-person meeting went on for about 45-60 minutes because that is how long I was with Sunil. Sunil then left the lounge to attend another meeting and I waited around to meet another contact.*

*While I was waiting for my contact, I noticed Ser Miang leave and then after some more time passed, I saw Josep leave. Gerardo also eventually left, and it was ultimately only Gerard left in the lounge. At one point I went over to speak with Gerard. He explained his involvement with sailing and his work with sport in Catalonia. **He told me how he was helping to drive Gerardo’s campaign efforts to become the next President of World Sailing, and that they were spending time in Lausanne meeting with supporters to help get Gerardo elected in the fall of 2020.***

*While I did not hear the conversation between Gerardo Seeliger, Josep Pla, Ser Miang and Gerard Esteva, **it appeared to me based on my conversations with Gerardo and Gerard that day that the four of them***

were discussing how they could support Gerardo's campaign to run for President of World Sailing."

Not only did Mr Miang fail to disclose the above, he also failed to provide any explanation or objection to the above when Mr Singleton's witness statement was submitted. It also appears that he did not raise any objection to the appointment of Mr Pla as EO, when based on the above it is clear that too was a conflict of interest."

66. So applying the current test in English law of apparent bias, the question which we must ask ourselves is this: would a fair minded and informed observer ("the observer") conclude from the facts which we have related that there was a real possibility that Dr Neupert and/or Mr Miang were biased in their consideration of Mr Andersen's objections to the Opinion and to the Commission's decision of 18 August 2020 contained in Mills & Reeve's emails of 28 September and 5 October 2020? So far as both Dr Neupert and Mr Miang are concerned, we have no doubt that the answer to that question must be yes.
67. We are in no position to make any definitive findings on the substance of Mr Andersen's complaints against either Dr Neupert or Mr Miang, nor is it any part of this appeal for us to do so. The observer would likewise have been in no position to make any definitive findings on the substance of Mr Andersen's complaints against either individual. But the observer would, we conclude, have considered that Mr Andersen's complaints against both Dr Neupert and Mr Miang arising out of the appointment of Mr Pla, apparently supported by evidence from third parties in the form of Mr Hénard's emails of 20 and 26 May 2020 and Mr Singleton's witness statement, could not simply be dismissed without further ado but rather required detailed investigation. In addition, the other three heads of Mr Andersen's complaint against Dr Neupert impugned Dr Neupert's competence as

Chairman of the Commission, for example by proceeding with the meeting on 18 August 2020 notwithstanding that, as Mills & Reeve had pointed out in their email of 17 August 2020 quoted in para.9 above, the Commission had not been quorate since Mr Hénard's resignation in May 2020; and Mr Andersen's complaint against Mr Miang accused Mr Miang of himself being the subject of a conflict of interest at the time of Mr Pla's original appointment. Pending the resolution of Mr Andersen's complaints against both individuals the observer would have taken the view that there was an obvious possibility of bias, at least apparent if not actual, such that both Dr Neupert and Mr Miang should have recused themselves from taking any part in the meeting leading to the Decision on 8 October 2020. Instead, by taking part in the meeting, and voting on the Decision, they invalidated the Decision and rendered it null and void.

68. We recognise that it can be said that both Dr Neupert and Mr Miang were in one sense placed in the situation in which they found themselves as the direct result of the action taken by Mr Andersen himself in raising his complaints against them. But what matters is not so much the fact of the complaints as their substance. So in our view this factor cannot displace or alter our conclusion that both Dr Neupert and Mr Miang were in a position of at least apparent, if not actual, bias at the time of the Decision.

69. So far as Dr Neupert is concerned, there is the additional matter of his unexplained misdescription in his email to Mills & Reeve of 2 October 2020 of the Complaint as one of the criminal offence of forgery. In this regard it would have been apparent to the observer that Dr Neupert had sent his email of 2 October 2020 in his capacity as Chairman of the Commission, a body "charged with promoting ethical behaviour within

World Sailing” (as set out in the Introduction to the Code). It would also have been apparent that he had copied his email to members of the Commission who in due course were to take part in the meeting, and in the Decision, six days later on 8 October 2020. Finally, it seems to us that the observer should be treated as knowing that Dr Neupert is, as he informed the Panel in his email of 14 March 2021 to Dr Smith, a lawyer and a judge. In those circumstances it seems to us that Dr Neupert’s inaccurate use of the word forgery to describe the Complaint is capable of supporting the conclusion of bias which we have already reached in respect of him.

70. In those circumstances it seems to us that the Decision cannot stand on this second ground also.

(3) The Decision contained no rationale or analysis

71. It is an established principle of English administrative law that in many, but not necessarily all, cases a tribunal will be under a duty to give reasons for its decision. The main purpose for this rule is to enable the losing party to know on what basis he has lost. But the law also recognises that, as Sedley J. said in R. v. Higher Education Funding Council ex parte Institute of Dental Surgery [1994] 1 WLR 242 (at p.256):

“The giving of reasons may among other things concentrate the decision-maker’s mind on the right questions.”

72. In our view, however, Mr Andersen has no need to invoke this principle in the present appeal for the simple reason that the Decision did set out a reason, and the only reason

for it, namely that which we have discussed under Mr Andersen's first ground above. We have found that reason itself to be misconceived. Accordingly this third ground does not fall to be considered.

Conclusion

73. For the reasons set out above we allow Mr Andersen's appeal against the Decision on both of the first and second grounds set out in his Notice of Appeal. We find that the Decision of 8 October was null and void and we set it aside as requested in section D para.I of the Notice of Appeal. We therefore order that Mr Andersen's challenge to Mr Pla's Opinion be considered afresh by the newly constituted Commission.
74. We now turn to the remaining orders sought in section D of the Notice of Appeal. Since there are now, so far as we are aware, no conflicted members of the Commission, we see no need for the detailed order sought in para.II. As for para.III, we do not think it necessary or desirable for us to dictate to the newly constituted Commission how they should go about the task of reconsidering Mr Andersen's challenge, especially given that by Reg.8.14.7 it is for the Commission to "adopt its own rules of procedure to govern its meetings and operations". We feel sure that the newly constituted Commission will approach the task properly and fairly in accordance with established principles of English law.

Costs

75. By RoP.14.1:

“The costs of the Independent Panel shall be borne by World Sailing unless the Panel orders that a party shall contribute in full or in part to those costs due to the party’s unreasonable conduct in the proceedings.”

Since none of the parties has, in our view, been guilty of such unreasonable conduct, we make no order for contribution to the costs of the Panel. In accordance with RoP.14.2, the parties will be responsible for their own legal and other costs.



David Hunt QC



Venetia Bennett



Vidushpat Singhania

Independent Appeals Panel Members

30 April 2021

APPENDIX 1

COMPOSITION OF THE ETHICS COMMISSION IN 2020

<u>Date</u>	<u>Event</u>	<u>Number of Commission members</u>	<u>Identity of Commission members</u>
Start of 2020		7 (quorate)	Dr Neupert, Mr Martin, Mr Miang, Ms Keen, Mr Hénard, Mr Hròbjartson, Ms Wilkes
20 May	Mr Hénard resigns	6 (not quorate)	Dr Neupert, Mr Martin, Mr Miang, Ms Keen, Mr Hròbjartson, Ms Wilkes
12 August	Ms Keen resigns	5 (not quorate)	Dr Neupert, Mr Martin, Mr Miang, Mr Hròbjartson, Ms Wilkes
19 August	Mr Hròbjartson resigns	4 (not quorate)	Dr Neupert, Mr Martin, Mr Miang, Ms Wilkes
18 September	5 new members appointed	9 (quorate)	Dr Neupert, Mr Martin, Mr Miang, Ms Wilkes, Mr van den Bossche, Ms Greenwood, Ms Walch, Mr Derouiche, Ms Tobin
4 October	Ms Tobin resigns	8 (quorate)	Dr Neupert, Mr Martin, Mr Miang, Ms Wilkes, Mr van den Bossche, Ms Greenwood, Ms Walch, Mr Derouiche
23 November	Ms Wilkes resigns	7 (quorate)	Dr Neupert, Mr Martin, Mr Miang, Mr van den Bossche, Ms Greenwood, Ms Walch, Mr Derouiche

26 November	Mr van den Bossche and Ms Greenwood resign	5 (not quorate)	Dr Neupert, Mr Martin, Mr Miang, Ms Walch, Mr Derouiche
4 December	Mr Miang resigns	4 (not quorate)	Dr Neupert, Mr Martin, Ms Walch, Mr Derouiche
22 December	Remaining 4 members removed and 11 new members appointed	11 (quorate)	