

UNDER THE WORLD SAILING ETHICS COMMISSION RULES OF PROCEDURE

**IN THE MATTER OF THE COMPLAINT**

**MADE BY:**

**MR. GYORGY WOSSALA**

**&**

**MR. ZVI ZIBLAT**

**(“the Complainants”)**

**AGAINST:**

**MR. KIM ANDERSEN**

**&**

**MR. ANDY HUNT**

**(“the Respondents”)**

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**DECISION OF THE APPOINTED ETHICS OFFICER MADE PURSUANT TO  
REGULATION 36.10 OF THE 2019 WORLD SAILING REGULATIONS**

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Appointed Ethics Officer: Craig Harris  
Furnival Chambers  
30-32 Furnival Street  
London, EC4A 1JQ  
Tel. 020 7405 3232

Decision Dated: 3<sup>rd</sup> December 2019

## **INTRODUCTION**

1. This document sets out the decision of the Ethics Officer (“EO”), appointed in accordance with Regulation 36<sup>1</sup> of the 2019 World Sailing Regulations<sup>2</sup> (“the Regulations”), in respect of a complaint made by Mr. Gyorgy Wossala and Mr. Zvi Ziblat (“the Complainants”) against Mr. Kim Anderson and Mr. Andy Hunt (“the Respondents”) (together, “the Parties”). The complaint was particularised in its final form by way of a letter on behalf of the Complainants from their lawyer, Mr. J. Joseph Bainton, of Dunnegan & Scileppi LLC, New York, dated 21<sup>st</sup> May 2019.
2. The matters raised in that letter will be referred to generically as “the Complaint” where appropriate. Within the Complaint, however, were nine individually particularised complaints, each of which has been considered on its own merits by the EO (although not in isolation from the generality of the Complaint as a whole, as they are “interrelated”, as the letter states) in coming to a decision as required, pursuant to Regulation 36.10.

## **SUMMARY OF DECISION**

3. Pursuant to Regulation 36.10, the EO has decided to take no further action in respect of any of the nine particularised complaints, or, therefore, the Complaint as a whole, in accordance with Regulation 36.10(a). The Parties are hereby informed of that decision.

## **REQUEST FOR SECOND INVESTIGATION**

4. This decision is subject to the review procedure set out at Regulation 36.12, which provides that:

*“36.12 - In the event that the Ethics Officer has decided to take no further action, within seven days of receipt of the decision<sup>3</sup>, the complainant may make a written request to the Chairman of the Ethics Commission that a second Ethics Officer be appointed independently to investigate the complaint. If such a request is made the Chairman may, within 14 days of the request, appoint*

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<sup>1</sup> Specifically, Regulation 36.4

<sup>2</sup> As updated and approved by the World Sailing Council on 19<sup>th</sup> May 2019. References hereafter to ‘Regulation’ in the singular should be construed as such.

<sup>3</sup> This decision is dated 3<sup>rd</sup> December 2019 as per the front sheet to this document and was provided to the Parties and Mr. Matt Berry, of Sport Resolutions, on behalf World Sailing, by email of the same date (GMT).

*a second Ethics Officer to investigate and make a decision in accordance with Regulation 36.10. This process may only be applied once in relation to any complaint”.*

5. The EO is not aware of any previous decision made by an EO in respect of this Complaint, or any aspect of it.
6. The reasons for this decision are therefore set out below, to inform the Chairman of the Ethics Commission of the basis for the decision, should the Chairman be tasked with considering any request from the Complainants (or either of them) for a second investigation, pursuant to Regulation 36.12.
7. There is no provision under the Regulations for the form that a decision made under Regulation 36.10 should take, or a timeframe in which it should be made, other than that, *“The decision...shall be communicated to the Party [who is to be charged, warned, or have no further action taken against them pursuant to such a decision] and the complainant(s) at the first reasonable opportunity”* and *“A copy of the decision shall be sent to the Chairman of the Ethics Commission”*<sup>4</sup>.

## **OVERVIEW OF THE ETHICS OFFICER’S ROLE**

8. In addition to the Regulations cited above, at all times the EO has been mindful of the World Sailing Code of Ethics<sup>5</sup> (“the Code”), the ISAF Code of Ethics<sup>6</sup> and the World Sailing Ethics Commission Rules of Procedure.
9. The EO has also been mindful to approach that role the spirit of investigation, in the first instance, consistent with the provisions of Regulation 36, rather than as a quasi-judicial decision maker on the quality of any particular evidence, or the merits, or otherwise, of any submissions (legal or factual) that have been made on behalf of either the Complainants or Respondents during the course of the investigation, or which might yet be made to the Ethics Commission in connection with this matter. An EO’s role, in the first instance, must be to collect evidence relevant to a complaint as an independent investigator, whether that points in favour of the complaint or the response to it, with a view to deciding which of the three courses of action should be taken consequent to that investigation, under Regulation 36.10.

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<sup>4</sup> See Regulation 36.11

<sup>5</sup> As approved by the World Sailing Council on 03/11/18 and incorporating the amendments made by the Council on 19/05/19.

<sup>6</sup> As approved by the World Sailing Council on 08/11/14.

10. Plainly, however, the EO must scrutinise the evidential sufficiency of a complaint to determine whether there would be at least a *prima facie* basis upon which to issue a warning or bring a charge, under Regulation 36.10(b) or (c) respectively. There must also be consideration of what are reasonable and proportionate (rather than becoming unreasonable and disproportionate) lines of investigation.
11. This investigation has therefore been conducted mindful of the responsibilities and functions of the EO, as set out at Regulation 36.5, and the decision that the EO was required to make, as between the three options set out at Regulation 36.10(a)-(c), in the context of the burden and standard of proof that would apply to proceedings before the Ethics Commission<sup>7</sup>, in the event of any Party being charged with a breach of the Code.
12. The matters set out in this document, however, do not represent any findings of fact or a determination of any submissions made on behalf of the Parties during the investigation, which the EO is not appointed to determine under Regulation 36.
13. The EO has been particularly mindful to approach his task with reference not only to Regulation 36, but within the spirit of the Regulations and natural justice throughout.

## **INDEPENDENCE**

14. The EO has remained wholly independent of the Parties, World Sailing and any other person, group or organisation, in conducting all tasks pursuant to the appointment and investigation.
15. Checks for potential conflicts of interest were conducted, transparently between all Parties, with the assistance of Matt Berry, Senior Case Manager at Sport Resolutions (appointed to assist World Sailing's Ethics Commission), consequent to the EO's appointment. Communications as between the EO, the Parties (via their lawyers), Sport Resolutions and World Sailing in respect of those checks are available if required.
16. The content of those communications need not be rehearsed here, as all those concerned expressly confirmed their opinion that the EO was properly and independently appointed for the purpose of this investigation. The EO has remained such throughout.

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<sup>7</sup> As is clear from Regulation 36.17, the burden of proving any charge would inherently rest upon the prosecutor/Claimants, at least to the standard of the balance of probabilities, or else a breach of the Code could not even be 'proven' to be more likely that not to have occurred in the first place, as would be required for serious allegations such as these, in the EO's opinion.

## **CHRONOLOGY & BACKGROUND**

17. The general complaints that became subject to this investigation, the first of which was lodged with the Chief Executive Officer of World Sailing on behalf of Mr. Ziblat, on 11<sup>th</sup> March 2019, and was supported shortly thereafter by a complaint lodged by Mr. Wossala, had been amended throughout the course of proceedings prior to the appointment of the EO.
18. The Regulations pursuant to which those complaints had been made were also amended during the course of the proceedings, prior to the appointment of the EO.
19. A preliminary hearing in respect of those complaints was held before the Ethics Commission on 30<sup>th</sup> May 2019, where issues concerning the amendments to the complaints and Regulations arose for resolution, amongst other matters. By that time, the preceding complaints of Messrs. Wossala and Ziblat had been conjoined, by way of the letter dated 21<sup>st</sup> May 2019, referred to at §§1-2 above.
20. Following the preliminary hearing, by written decision of the Hon. John Faire, sitting as Chairman on behalf of the World Sailing Ethics Commission, dated 17<sup>th</sup> June 2019, it was established that:
  - (i) The complaint to be investigated (as was accepted by the Complainants) was that finally dated 21<sup>st</sup> May 2019, entitled “*Amended complaint of Gyrogy Wossala and Zvi Ziblat alleging violations of...the Code of Ethics of World Sailing and...the Ethics Code of the International Olympic Committee by Mr. Anderson and Mr. Hunt*”, which superseded all previous complaints<sup>8</sup> and represented a conjoined complaint on behalf of both Complainants (that is “the Complaint” as identified at §§1-2 above); and
  - (ii) The Complaint would proceed pursuant to the ‘new’ Regulation 36.4 and consequent provisions (i.e. the version of the Regulations adopted by the World Sailing Council on 19<sup>th</sup> May 2019, again as was accepted by the Complainants)<sup>9</sup>.
21. The chronology of the proceedings as they had been up to that stage are set out in the body of the Ethics Commission’s decision, as referred to above, and need not be rehearsed here.

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<sup>8</sup> See the decision at §§5.1 – 5.2

<sup>9</sup> See the decision at §§6.1 – 6.4. This aspect of the decision also appears consistent with the terms of Regulation 36.4 under which the EO was appointed, if one accepts (as the Complainants did) that the Complaint in respect of which proceedings would continue was that dated 21<sup>st</sup> May 2019.

22. The appointment of the EO was subsequently confirmed on 2<sup>nd</sup> July 2019.
23. In the interests of brevity, the detailed background and nature of the Complaint, particularised as nine specific complaints in all, also need not be rehearsed in full here. The specific complaints are referred to in order below (see “Detailed Decision”) and, pursuant to the decision of the Ethics Commission of 17<sup>th</sup> June 2019<sup>10</sup>, the reader may simply refer to the Complaint as it was in final form, by the letter from Mr. J. Joseph Bainton, on behalf of the Complainants, dated 21<sup>st</sup> May 2019.

### **SCOPE AND EXTENT OF THE INVESTIGATION**

24. The reader is directed to the full written decision of the Hon. John Faire, on behalf of the Ethics Commission, dated 17<sup>th</sup> June 2019.
25. In particular, reference should be had to §8.6 of that decision, by which, under consideration of ‘*Conflict of Interest – Recusal of Commissioners*’, the Ethics Commission noted that:

*“...The case is no longer about the wisdom of substituting an offshore event for the Finn dinghy in the Olympics. If charges are laid, the issue of the Ethics Commission’s determination will be the culpability or absence of culpability of the Respondents in respect of the charges laid.”*

26. The EO was been mindful of that observation and the ‘Orders and Directions’ set out at §§11.1 – 11.5 of the Ethics Commission’s decision upon commencing this investigation.

### **Agreement between the Parties**

27. Shortly after appointment, by email dated 10<sup>th</sup> July 2019, the EO contacted the lawyers representing the Parties in this matter. A copy of the email is labelled **Appendix 1** to this decision.
28. A central purpose of the email was for the EO to set out the intended scope of the investigation, by reference to Regulation 36, particularly because the Complaint raised the prospect of evidence being obtained from individuals and/or organisations that appeared to fall outside the reach of World Sailing’s jurisdiction. The EO set out his view of the Regulations in the following terms (in summary):

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<sup>10</sup> See §20 above.

- (i) *The powers conferred upon the Ethics Officer to conduct interviews extends only to requesting them of any “Party” in furtherance of the investigation<sup>11</sup>. “Party” is not defined in the ‘Definitions’ section of the Regulations, but would appear to be defined within regulation 36.2 for these purposes. That dictates the scope of any investigation I may conduct in terms of interviews (per r.36.6); but*
- (ii) *Regulation 36.5 provides that the Ethics Commissioner is responsible for “the investigation of complaints” (there is no limitation there as to the scope of investigation) and Regulation 36.7 provides that, “All Parties and WS [World Sailing] must take all reasonable measures to assist an Ethics Officer in the Collection of Evidence...”. Regulation 36.7 goes on to provide that failures to comply with such requests may be reported as Misconduct under regulation 35, which reporting, of course, could only apply to Parties to the Regulations, but it appears to me that the regulations (36.5 in conjunction with 36.7) would permit me to request that Party assists in the collection of evidence generally i.e. including that from third parties (that is to say, not themselves governed by WS), if appropriate.*
29. The EO invited each Party to consider those observations and submit any observations of their own for the EO to consider, if there was disagreement, or else for each Party to confirm that they agreed with the EO’s interpretation and intended application of the Regulations so far as the scope of the investigation was concerned. It was noted that such considerations would define the scope of the investigation and any requests the EO might make of either Party in the event the EO wished to consider evidence – if it could be obtained by either Party – from those who were not within World Sailing’s jurisdiction i.e. not subject to the investigation or Regulations.
30. Mindful of Regulation 36.7<sup>12</sup>, in the same email the EO recognised that, *“Third parties might or might not comply with any such requests made of them by Parties to these proceedings [to provide evidence] and that their (i.e. the third parties’) unwillingness/failure to assist would then not be held against the Party who has made the request of them, perhaps at my [the EO’s] instigation, so far as the risk of any report for Misconduct might be concerned”.*
31. Both the Complainants and the Respondents, through their lawyers, replied so as to confirm that they agreed with the EO’s interpretation of the Regulations, by which the appointment and terms of the investigation were governed.
32. The Complainants’ response came by letter (via email), dated 16<sup>th</sup> July 2019 [**Appendix 2**]. The Respondents’ had come in the same form, dated 15<sup>th</sup> July 2019 [**Appendix 3**].

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<sup>11</sup> See Regulation 36.6.

<sup>12</sup> Setting out the potential for failure to comply with an Ethics Officer’s request for production of evidence or attendance at an interview to be reported as Misconduct under Regulation 35.

33. Those responses gave rise to issues that the EO was already considering in any event, as are referenced below, but it is noted (as at §12 above) that this decision does not represent a determination of any of the legal arguments raised therein. The EO's role was ultimately limited to deciding what action to take under Regulation 36.10.

#### **Specificity of the Complaint & consideration against the Code as a whole**

34. The EO has been mindful that whilst the Complaint is conjoined in this case, as between both Complainants, referencing nine specific allegations against both Respondents, it would be open to the EO to issue a warning(s) and/or to bring a charge(s)<sup>13</sup>, if appropriate, against the Respondents individually or collectively, whether in the precise terms as particularised in the Complaint or even as better-particularised by the EO, upon the EO's identification of any alleged breach of the Code arising pursuant to the Complaint, or part thereof.
35. The EO has not, therefore, taken a blanket approach so as to come to the same decision in respect of each facet of the Complaint as a whole. Each aspect of the Complaint has been considered, as against each Respondent, with the EO alive to the option of coming to different decisions under Regulation 36.10 as regards different facets of the Complaint and/or any other *prima facie* violation of the Code as the EO might have identified during the investigation.
36. It might be, for example, that substantive (alleged) facts upon which any part of the Complaint is based would amount to a violation of the Code, if proved, even if not by reference to the exact same provision of the Code as the Complainants and/or their lawyers consider the Respondents to have violated by reference to those same facts. The Complaint has therefore been considered in the round, against the provisions of the Code as a whole<sup>14</sup>. All such matters and decisions were entirely at the discretion of the EO<sup>15</sup>.

#### **Alleged breaches of International Olympic Committee provisions**

37. It must be observed, however, that the appointment of an EO under Regulation 36 restricts his/her functions to the investigation of alleged violations of the World Sailing Code of Ethics, decisions to be made consequent to that investigation<sup>16</sup> and, should charges be brought, the prosecution of

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<sup>13</sup> Pursuant to Regulation 36.10

<sup>14</sup> This observation might be particularly pertinent to the letter received from Mills & Reeve on behalf of the Respondents, dated 15<sup>th</sup> July 2019 [Appendix 3], in which they contended that even if proved (which was denied), the facts relied upon by the Complainants would not place the Respondents in violation of the specific provisions of the Code by reference to which the particularised complaints had been formulated on the Complainants' behalf. Regardless of their formulation and express reference to certain provisions of the Code, the Complaint has been considered against the Code as a whole and the EO's decision should be construed accordingly.

<sup>15</sup> As Mills & Reeve accepted on the Respondent's behalf, in the same letter as at footnote 14 above.

<sup>16</sup> Within the limits of Regulation 36.10

alleged violations of the World Sailing Code of Ethics before the World Sailing Ethics Commission (and the Independent Appeal Panel thereafter, should an appeal arise), subject to the World Sailing Ethics Commission Rules of Procedure.

38. It follows that alleged violations of the International Olympic Committee (“IOC”) Code of Ethics, Articles and/or Regulations, as they are variously cited in the Complainant, are not complaints in respect of which the EO may make a decision pursuant to Regulation 36.10. The alleged facts upon which such complaints are based could also amount to breaches of the World Sailing Code of Ethics and they have been considered in that context, but the EO has no jurisdiction to bring charges contrary to IOC legislative provisions. Neither would the World Sailing Ethics Commission have jurisdiction to consider charges brought contrary to any provisions other than those set out in the World Sailing Code of Ethics.
39. In response to a request of the EO (which is detailed further below from §44 and can be found at **Appendix 4**) as to how the Complainants assert charges could be brought under IOC provisions before the Ethics Commission of World Sailing, the Complainants submitted a declaration of Mr. Paul Henderson in support of the contention that *“any violation of the IOC Code of Ethics is automatically a violation of the World Sailing Code of Ethics”*<sup>17</sup>.
40. That contention and Mr. Henderson’s declaration are, with respect, wholly misplaced. It might be that conduct that would violate the IOC Code of Ethics also violates the World Sailing Code in its own right, in which case the IOC rules need not be relied upon in any event. And it might be that a proven violation of IOC rules could then be relied upon by way of further complaint before the World Sailing Ethics Commission, to the effect that the conduct itself is proved and should also be considered a violation of the World Sailing Code. Or, even if the conduct would not necessarily offend against the World Sailing Code, it could be argued that the fact of a violation of the IOC rules would in itself give cause for proceedings under the World Sailing Code on the basis that the violation of IOC rules would *“tarnish the reputation of World Sailing”*<sup>18</sup>, for all the reasons set out in Mr. Henderson’s declaration as regards World Sailing being the International Federation for the sport of sailing for the purposes of Article 25 of the Olympic Charter, by which World Sailing is therefore bound.
41. What Mr. Henderson and the Complainants have not recognised, however, is that only the IOC has jurisdiction to determine whether alleged breaches of its own rules are proved in the first place – World Sailing does not. One cannot seek to prove a violation of the World Sailing Code of Ethics by reference to an assumption that *if* such conduct were charged in proceedings before

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<sup>17</sup> Paragraph 17 of the Declaration of Ziblat, dated 11<sup>th</sup> September 2019.

<sup>18</sup> Contrary to paragraph 1.3(e) of the Code.

the IOC's quasi-judicial machinery, as a breach of its rules, such a breach would be found proved, and then transpose that assumption so as to impose liability under the World Sailing Code via its Ethics Commission.

42. Whilst it is right to say that World Sailing is bound to comply with its obligations as per its commitments to the IOC (as are its members), that does not mean the World Sailing Ethics Commission could find a violation of its own Code proved by reference to the Code of Ethics of another body (the IOC) over which it has no jurisdiction. Moreover, the Ethics Commission is not empowered to reach decisions on that basis.
43. The IOC legislative provisions are therefore not relevant to this matter, in the absence of any determination of any complaint against the Respondents under IOC rules, and will not be referred to again in this decision. They offer no basis upon which the EO could have decided to charge or warn the Respondents in respect of any of their conduct, less still upon which the Ethics Commission could find a charge proved under the Code that it has the power to apply; that is the World Sailing Code of Ethics, not any code of the IOC.

#### **EO REQUEST FOR FURTHER EVIDENCE & INFORMATION**

44. During the course of the investigation, the EO made a request for the production of evidence and further information from the Parties, dated 18<sup>th</sup> August 2019<sup>19</sup> [**Appendix 4**].
45. Responses from the Parties, which had been requested by 13<sup>th</sup> September 2019, were received in accordance with the timeframe that was set.
46. In the case of the Complainants, the response came in the form of a sequence of emails and attachments, some with explanation as to the relevance of the content and others not, albeit the content often spoke for itself. Those emails have been collated and provided with this decision [**Appendix 5**].
47. In the case of the Respondents, there was an email that indexed an explanatory letter, a paginated bundle of documents (also indexed within itself), a table setting out specific responses to the EO's requests (with reference back to the supporting material in the bundle) and a chronology of events relevant to the requests (also with reference back to the bundle). That response is also provided [**Appendix 6**].

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<sup>19</sup> The "First Request of the Ethics Officer for Production of Evidence and Further Information", dated 18<sup>th</sup> August 2019. There were no further such requests.

48. World Sailing has not previously received this material (in either Appendix 5 or 6) and it should be considered accordingly, alongside this decision.
49. The EO had requested that those responses first be sent to the EO alone – as they were – so that some control could be kept over this investigation, which, otherwise, would have completely lost focus amidst much conjecture upon matters that had no bearing upon the issues that the EO was appointed to investigate. Once the material had been considered, however, the EO cross-disclosed each Party’s response to the other in full, so that all were aware of all material submitted in the course of the investigation. Having considered that material, the EO was in a position to make this decision under Regulation 36.10 without the need for further investigation.

### **DETAILED DECISION**

50. The EO’s decision in respect of each aspect of the Complaint is set out below, adopting the numbering given from page 11 of the Complaint letter, dated 21<sup>st</sup> May 2019.

#### **Complaint 1:**

*“Respondents have failed to safeguard the dignity of the individual, namely (a) all Olympic Sailors and prospective Olympic Sailors weighing more than 85 kilos; (b) all Olympic Sailors and prospective Olympic Sailors whose religious beliefs prevent them from sailing in a mixed gender event overnight; and (c) the Complainants and Peter Hall and Hector Duval whom they know did not vote at the 2018 Annual General Meeting in the manner in which their votes were inaccurately recorded and reported all in violation of Code Section 2.1(a) and IOC Articles 1.”*

51. This complaint is a generic one, in that it alleges the Respondents have failed to safeguard the dignity of three groups of individuals, labelled (a), (b) and (c), aspects of which also feature in further, specific complaints below.
52. It alleges that the Respondents failed to safeguard the dignity of those individuals by reference to their (the Respondents’) claimed *knowledge* that the Complainants, Peter Hall and Hector Duval *“did not vote at the 2018 Annual General Meeting in the manner in which their votes were inaccurately recorded and reported all in violation of Code Section 1.2(a)”*<sup>20</sup>.
53. No specific act or omission on the Respondents’ part, pertaining to their claimed knowledge, is identified in this complaint. The complaint is assumed to be that the Respondents acted

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<sup>20</sup> As well as in violation of the “IOC Articles”, which are not referenced again for the reasons given at §§37-43 above.

inappropriately, or failed to act appropriately upon that claimed knowledge, thereby allowing the inaccurate recording of votes to stand, with consequences for those named at (a), (b) and (c) that are said to amount to violations of section 1.2(a) of the Code. This complaint therefore relates directly to alleged impropriety in voting at the 2018 Annual General Meeting and process adopted thereafter.

**Alleged impropriety concerning votes at the World Sailing Annual General Meeting, 2018**

54. Many of the complaints in this case depend upon allegations concerning the Respondents' conduct leading up to, during and after the vote at the World Sailing Annual General Meeting in Sarasota, Florida, on 2<sup>nd</sup> – 4<sup>th</sup> November 2018 (the "2018 AGM").
55. The alleged impropriety surrounding that vote is, in fact, the central plank of the Complaint as a whole. All of the particularised complaints (1-9) are levelled at the Respondents, in person, on the basis that they were responsible, by some means, for inaccurate recording of votes at the 2018 AGM. It is by that impropriety, say the Complainants, that the Respondents were able to give effect to their own personal intentions, which the Complainants do not accept were legitimate, but say were motivated by illegitimate self-interest. The nature of the Respondents' intentions and self-interests, from the Complainants' point of view, are set out throughout the Complaint and culminate in the nine particularised complainants concerned in this decision. The overarching essence of the allegations, however, is encapsulated in a single paragraph at page two of the Complaint letter of 21<sup>st</sup> May 2019, which reads:

*"The 'straw that broke the camel's back' leading to commencement of this proceedings was the conduct of [the Respondents] relating to gross irregularities in voting at the 2018 World Sailing Annual and the cover-up, this was but one step in along and continuing process that has tarnished the reputation of World Sailing and has and is creating serious doubt about its chances of remaining an Olympic Discipline. In short, Respondents' knowing denial of what everyone at the November meeting knows with complete certainty were the negative votes of Claimants so that Respondents could unlawfully achieve their goal of obtaining approval of their last minute non-urgent 'emergency submission' motivated by improper financial goals breached to the core not only the law, but any sense of fundamental moral integrity".*

56. It appears to the EO that the Complainants had little choice but to frame the Complaint in these terms i.e. by reference to alleged impropriety in connection with voting at the 2018 AGM, albeit the strength the above statement might call for significant evidence in support. If the Respondents *could not* be blamed for the said improprieties in the processes that gave effect to their "improper"

aims, namely the vote at the 2018 AGM and the approval of the minutes of that meeting thereafter, it is difficult to see how any blame could be attached to each, or either of them in person for the consequences of those processes (i.e. decisions that were all approved by due process under World Sailing rules) even assuming for present purposes that there were merit to the complaints about the consequences (i.e. that they had the effect of failing to safeguard the dignity of any individual(s)).

57. It follows that if there is no evidential basis to raise a complaint that there was any impropriety connected with voting at the 2018 AGM, or processes consequent thereto, AND that the Respondents, or either of them, were responsible for such impropriety, then (i) their personal motivations, aims and desires as to the outcome of those processes are rendered otiose to the Complaint<sup>21</sup>, and (ii) it would not be possible to attribute any adverse effects of the decision making process to either Respondent *in person* in any event.
58. Further to point (ii) above, the EO is tasked with deciding whether the Complaint, or any part of it, should be raised before the Ethics Commission, which is itself a creature of World Sailing i.e. the governing body's legislative provisions. It is, therefore, equally difficult to see how an EO could bring charges under Regulation 36.10 against an *individual*, whatever their position, on the basis that a violation of the Code resulted from a decision that was reached above and outwith their control, through a vote at an AGM, even if they supported a submission/motion upon which the vote passed.
59. Proving such charges would require the Ethics Commission to determine that the charged individual was in violation of an ethical standard within the sport despite the fact that the governing body itself (through approved votes in accordance with its constitution) does not recognise exists. An individual being in violation of the Code on that basis (assuming a relevant act or omission could be proved to put them in breach in the first place) would, necessarily, render the governing body itself, or at least all of those within it who voted in favour of the successful submission/motions, to be in violation of its own Code. The EO is not required, however, to determine the viability of a charge in such hypothetical circumstances, because the Complainants here seek to isolate and complain against the Respondents' personal conduct vis-à-vis voting at the 2018 AGM.
60. The Complaint, therefore, is put on the basis of the Respondents' alleged complicity in improper voting/recording processes. They are isolated in the Complaint on that basis. But there are

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<sup>21</sup> That the relevant constitutional bodies of World Sailing voted in favour of submissions/motions that happened to be supported/advanced by the Respondents is no basis for complaint against them, without more.

inherent difficulties raised by the nature of the Complaint in that respect. The Complaint variously alleges (in summary) that:

- (i) The Complainants rigged the voting process at the 2018 AGM by premediated design; AND/OR
- (ii) Allowed the use of unreliable and/or manipulatable electronic voting equipment such that the process could be so rigged (page 7 of the Complaint expressly sets out allegations in such terms, entitled, “*The Fraudulent Voting Scheme*”); OR
- (iii) Did not rig the voting process by design, but allowed the results to stand, to suit their own purposes, despite knowing that votes had been wrongly recorded; OR
- (iv) If they did not *know* as much as at (iii) above, allowed the results to stand, to suit their own purposes, despite having been informed of claims that certain individuals’ votes were wrongly recorded and not having done enough to investigate/correct the position; OR
- (v) Were negligent in allowing an electronic voting system to be used that they knew was unreliable; OR
- (vi) At the very least, wrongly allowed the results of the vote to stand, despite having become aware of potential unreliability in the voting system and claims that some individuals’ votes were wrongly recorded.

61. Complaints can, of course, be brought upon alternative bases. There is nothing wrong, in principle, with a complaint alleging that a party (i) knowingly acted, or alternatively (ii) knew of and permitted an act, or alternatively (iii) was reckless, or (iv) negligent as to the commission of an act that would be to violate a set of governing rules. There must, however, be an evidential and logical basis for such an approach, without which a multitude of supposed/potential bases for bringing an allegation go only to undermine its foundation.

62. For example, a large part of the Complaint alleges that the Respondents had some malevolent intent, to effect illegitimate aims upon World Sailing policy for their own personal interests, by, on the one hand, *premeditated rigging* of the voting process (“the Fraudulent Voting Scheme”) and a “cover up” thereafter. That assertion is severely undermined, however, when other parts of the Complaint resile to allegations that the Respondents merely *failed to correct* the result of a vote that is said to have been inaccurately recorded at first – suggesting they cannot necessarily be shown to have rigged the voting in advance at all, which itself then raises questions as to

whether they were ever so motivated (by alleged bribes and the like, as feature in the complaints below) in the first place.

63. Those two bases of complaint cannot coexist, in the circumstances of this case, if the evidence is said to be sufficient to bring charges in respect of either one of them in the first place. Rather, the Complaint appears to have been put in such alternate terms necessarily because there is insufficient evidence to prove a charge<sup>22</sup> upon either basis alone – if that is the position, it follows that there is no basis to charge at all. In the EO’s opinion, the various bases of complaint with regard to voting at the 2018 AGM, as set out at §60 above, inherently undermine the provability of any charge that could be put before the Ethics Commission that depends upon establishing impropriety in that voting process, attributable to the Respondents. The inconsistent basis of complaint about the Respondents conduct vis-à-vis the voting process at the 2018 AGM that runs throughout the Complaint as a whole is demonstrative of a lack of evidence upon which any credible charges could be brought pertaining to it/them.
64. That is not to express any opinion on the truth, or otherwise, of the Complainants in their written evidence that their votes and, perhaps, those of others, were inaccurately recorded at the 2018 AGM<sup>23</sup>. Indeed, no part of this decision depends upon the EO’s assessment of the truth of any witness who has submitted evidence, which would be a matter for the Ethics Commission to determine at the hearing of any disputed charge. The EO’s decision relates to the sufficiency of evidence (or not) to bring a charge in the first place. But it is just that – the evidence – that must be examined when considering the viability of bringing a charge, not mere opinion or conjecture.
65. The evidence concerning the determination of submissions to be voted upon at the 2018 AGM, the process of the AGM and voting itself, the aftermath, including investigations into and communications concerning the voting process, the approval of the minutes of that AGM and matters that followed thereafter are most significant when considering the various bases of the complaint set out at §60 above. What that evidence demonstrates is set out summarily in the chronology that was provided by Mills & Reeve solicitors, on behalf of the Respondents, in response to the EO’s request of 18<sup>th</sup> August 2019 (Appendix 6).
66. That chronology is attached as **Appendix 7** to this decision for ease of reference, as it sets out the source of the evidence upon which it is based (which is not - and cannot - be disputed) and

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<sup>22</sup> The EO notes that if there were *prima facie* evidence sufficient to take action under Regulation 36 on the basis of any complaint in this case, then charge (rather than issuing a warning) would have followed under Regulation 36.10, given the seriousness of the allegations.

<sup>23</sup> The EO has approached this investigation and decision on the basis that the Complainants did in fact vote as they claim to have at the 2018 AGM, so that their case has been considered at its highest (albeit that would likely be a matter in issue at any contested hearing of a charge).

avoids a regurgitation of voluminous amount of evidence in the body of this decision. Much of the same evidence had been produced by the Complainants at various stages during the course of the complaint/investigation in any event – the Mills & Reeve chronology is annexed simply for its ease of reference to paginated evidence that does not then need rehearsing here.

67. The chronology sets out the background to the use of electronic voting at World Sailing meetings, going back to May 2002. At that time, a different type of electronic system was in use, such that the fact electronic voting had been used previously would not necessarily absolve anyone of blame if the system used at the 2018 AGM were knowingly unreliable. But that history is relevant to the question of whether the Respondents were trying to conceal individuals’ votes for their own purposes. The chronology, in conjunction with the other material in Appendix 6, goes on to detail how the system used at the 2018 AGM came to be and, perhaps most importantly, highlights the following key events and material relating to the vote itself<sup>24</sup>:

<b><u>DATE</u></b>	<b><u>EVENT/MATERIAL [See Appendix 6]</u></b>	<b><u>REF.</u></b>
26-27/10/18	WS Board meeting – Production of “Urgent Submission” (submissions 037-18 and 58-18)	R12
01/11/18	Testing of the ARS voting system by PSAV	
2-4/11/18	<i>WS Council meeting and AGM of WS MNA Members</i>	
30/11/18	WS make publication of minutes at council meeting along with voting list	
03/12/18	WS Board meeting – held via conference call	R52
10/12/18	Correspondence between Jon Napier and Constitution Committee	R72
11/12/18	Independent Chair of the Audit Committee Review of the voting at the 2018 conference (see the report of Phil Cotton dated 11/12/18) Letter from PSAV to WS (Jon Napier) setting out steps taken by PSAV to prepare the voting system for the annual conference	R79 R80
12/12/18	Board meeting approving audit committee’s report on voting procedures and resolving to instruct WS external auditors (Haysmacintyre) to review the voting procedures	R82
14/12/18	Email from Andy Hunt instructing Haysmacintyre to conduct a review on the WS voting procedure	R87
17/12/18	Michael Downing of WS sends all PSAV voting files to auditors Haysmacintyre	R90
18/12/18	Letter from Kim Andresen to Council members calling a council meeting on 21/12/18	R98
19/12/18	Report from Haysmacintyre on review of voting at the WS conference	R101

<sup>24</sup> The wording of the table has been amended in parts by the EO, but not materially so

21/12/18	Information memoranda for Council – review of voting procedure and equipment WS Council meeting by conference call List of voting on approval of resolution passed at Council meeting on 21/12/18	R107
30/12/18	WS December 2018 Newsletter – Kim Andersen addresses controversy surrounding the voting process for submission 037-18 at the Council meeting and General Meeting in Sarasota. He highlights steps taken to investigate and address complaints.	R112
23/01/19	First draft of WS council minutes of 21/12/18 sent out to Council members	R120
08/02/19	WS Council minutes of 21/12/18 and correction note of Kim Andersen sent out to Council members	R127
9-10/02/19	Review and recommendation on voting procedures at WS meetings for WS Board Meeting in February 2019	R134

*[NOTE: This abbreviated table is not to suggest that the remainder of the chronology is not important (it must be considered in full, along with the material and specific responses to the EO's enquiries seen in Appendix 6), but it focuses on the demonstratively transparent, democratic process that was applied to the bringing of submissions to vote at the 2018 AGM, the vote itself, the investigations that followed the complaints about voting processes and approval of the minutes of the AGM thereafter]*

68. When one examines the events set out above, in particular, and the associated evidence that has been submitted during this investigation, one sees that there would be no evidential basis to suggest before an Ethics Commission hearing that either of the Respondents are responsible for any conduct of the kind particularised at §60(i)-(vi) above. Moreover, each relevant stage of the process that was undertaken in bringing submission 037-18 (or any other submission) to vote, the vote itself and the processes thereafter, were all approved in accordance with all requisite World Sailing procedures, whether the Complainants agreed with the outcome(s) or not.
69. The minutes of such meetings must record what happened in those meetings, or, in the case of a vote, that which the electronic voting system displayed as the result, not how individuals claim they meant to/did vote after the event – not least because they might not have so voted, whether through error otherwise. Importantly in the context of such claims having been made, however, those who raised concerns did have them recorded, responded to and independently investigated (twice, as can be seen in the table above) with the result that there was no basis to change the voting records. All such issues were made known to all concerned in the World Sailing Board and Council (indeed the World Sailing Community at large), and the constitutional bodies of the

organisation thereafter voted to approve the minutes – and thereby record of the vote – at the 2018 AGM.

70. It follows that the Respondents could only be responsible for any misfeasance in respect of voting at the 2018 AGM, or validation of its recorded result(s), if there were evidence that (i) they purposefully interfered in any stage of the process such that it was rigged, (ii) the result was caused to be misleading, or (iii) the voters themselves (whether the Board, Council or MNA Members) were misled in voting at the time, or misled thereafter in voting to approve the minutes of the AGM, such that the process, or any part of it, was invalidated despite appearing (and those who partook in it believing) that it was legitimate i.e. evidence of some kind of fraudulent activity or mis-representation, which was, of course, the central limb of the Complaint. There is no such evidence. Neither is there any indication as to where such evidence might come from, lest it be said that the EO has not pursued all lines of enquiry.
71. It follows, further, that whether or not the result of the voting at the 2018 AGM had, or might yet have discriminatory effects of the type claimed by the Complainants, such results cannot be attributed to either of the Respondents in person under the Code. There is no evidential basis to suggest, for example, that *they* caused those effects by improperly proposing submissions or interfering illegitimately in the voting processes by which constitutional bodies of World Sailing allowed the relevant submissions to be voted on and, ultimately, pass. How others, external to World Sailing, for example the IOC, might view the claimed sporting or discriminatory effect of the decisions that were made at the 2018 AGM is a matter for them. But no further analysis is required as to whether those effects can be proved, justified or not, because in the EO's opinion they could not be laid at the door of these two Respondents in person for the purposes of a charge or warning being issued under the World Sailing Code of Ethics in any event.
72. The evidential position on issues related to the 2018 AGM has wider significance, because there is a degree of circularity to the Complaint in this matter. Allegations of misfeasance on the Respondents' part in that voting process and thereafter is, in itself, relied upon as being demonstrative of some prior ill-intent and the means by which the violations of the code in complaints 1-9 are said to manifest.
73. If there would be no basis to alleged that the Respondents' misconducted themselves vis-à-vis the 2018 AGM voting processes, or in their response to concerns about the same that were raised thereafter, then, that process being the means by which they are said to have effected their illegitimate aims in such a manner as to breach the Code as alleged across complaints 1-9, the sustainability of each of those complaints also comes into question. That was the reason for the EO's first request for further information, dated 18<sup>th</sup> August 2019, being focused upon receiving

evidence to establish whether the Respondents' conduct with regard to the voting process at the 2018 AGM was impeachable or not. In the EO's opinion, having considered the evidence received, it was not – that must be borne in mind as each complaint is now addressed below.

*Decision on Complaint 1*

74. Returning to complaint one, therefore, the EO has decided that there is no basis to bring a charge or issue a warning on the basis that the either of the Respondents acted inappropriately, or inappropriately failed to act (which must, implicitly, be what this complaint amounts to) upon their alleged knowledge that the Complainants, Peter Hall and/or Hector Duval voted differently from how their votes were recorded at the 2018 AGM and reported thereafter.
75. It cannot truly be said that the Respondents did “know” that those individuals voted differently from how their votes were recorded. It is true that the Complainants have always insisted that they voted differently to how their votes were recorded. There is ample evidence to suggest that their publicised views were contrary to their recorded votes. There is also evidence concerning the testing of the electronic voting system that might have raised concerns about its performance and evidence that individuals other than the Complainants (Messrs. Hall and Duval) also had their votes inaccurately recorded, which adds to the credibility of the Complainants insofar as Messrs. Hall and Duval have not commenced any formal complaint and therefore do not have an “axe to grind” in maintaining their assertions that their votes were recorded wrongly.
76. Ultimately, however, the Respondents were left in a position whereby their only independent knowledge of how people voted at the 2018 AGM came from the results of the electronic voting system. There were claims from certain individuals that they voted otherwise than as recorded<sup>25</sup>, but any such concerns raised were taken seriously and investigated, on more than one occasion and, indeed, independently.
77. The result of those investigations<sup>26</sup> gave no grounds for the Respondents to take any action in terms of altering the voting records (any more than they would have had grounds to change the voting record of anyone else who might have publicly stated they voted other than as recorded, which would obviously be impermissible) and, on top of that, it was not the Respondents who

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<sup>25</sup> The EO does not consider the contention from Mills & Reeve on behalf of the Respondents that even had the “erroneously” recorded votes been recorded otherwise, there would not have been an effect on the result, to be pertinent to whether or not a charge might be brought under the Code. Any proven misconduct in the voting process would be sufficient to take further action, regardless of whether it had an effect on the overall outcome of the vote.

<sup>26</sup> See the report of Phil Cotton, the Independent Chair of the Audit Committee, dated 11/12/19, and the Haysmacintyre independent report into the vote, dated 19/12/19, both of which concluded that there were no inconsistencies in the voting records as between the electronic data and recorded minutes of the 2018 AGM.

gave final approval to the voting record – that approval was given by further vote of the Board, too. The declaration of Richard Gladwell, as provided provided by the Complainants during this investigation (see Appendix 5), is potentially significant, in that he uses the “*Garbage in, Garbage out*” analogy to explain that the results of the two independent investigations into the electronic voting system are to be expected in the circumstances and do not militate against a conclusion that it the system remained inherently unreliable. That, however, is the height of his evidence (even if it be accepted without challenge), and it does not get near to demonstrating fraudulent conduct on the Respondents’ part, as is essential to the Complaint in this case; see the nature of the Complaint as quoted at §55 above.

78. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the first complaint.

### **Complaint 2:**

*“Respondents have indirectly solicited concealed benefits from manufacturers and other sponsors of equipment and events related to the mixed gender offshore keel boat event without due authorization by world Sailing and, upon information and belief, received conditional assurances of such benefits in violation of Code Section 1.3(a).”*

79. As characterised in the letter from Mills & Reeve solicitors, dated 15<sup>th</sup> July 2019, this complaint amounts to an allegation that the Respondents were party to, solicited or were the recipients of some kind of bribe(s) in violation of paragraph 1.3(a) of the Code. There is, simply, no evidence in support of such a suggestion. The complaint itself is said to be based upon “information and belief”. Any such information is unidentifiable and any such belief is no basis for the EO to take action in the absence of actual evidence upon which such a belief is based<sup>27</sup>.

80. There is a plethora of documented opinion as to conflicts of interest running through the World Sailing community that have been raised in material submitted to the EO in this matter. There is not, however, any evidence – whether direct or circumstantial, from which an inference could be drawn – that the Respondents were party to, solicited or accepted bribes for any purpose.

81. Additionally, in the context of the Complaint as a whole, the implication of this specific complaint is that the Respondents were party to, solicited or accepted bribes in order to give effect to that for which they were allegedly being bribed through the vote at the 2018 AGM and

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<sup>27</sup> The same was requested by the EO in the request of 18<sup>th</sup> August 2019 (see §9(i) thereof), but, as was common with this Complaint, the response amounted to a volume of speculative opinion and conjecture rather than actual evidence in support.

consequent “cover up”. This is an example of the position explained at §§72-73 above, whereby the alleged issues concerning the vote and connected process is itself said to be evidence in support of wider wrongdoing, and vice versa.

82. One would expect a process of taking bribes to effect votes to necessitate a premediated decision to effect the outcome of the vote, whether effecting it in advance or by ensuring a result were maintained even if found to be erroneous. All such issues have been dealt with at §§54-73 above. There is no evidential basis upon which to sustain such an allegation.
83. The evidence does not lend to any suggestion that the Respondents’ were soliciting/accepting bribes, by reference to some fraudulent conduct on their part in connection with the voting process for which the bribe was allegedly being paid, as there is no identifiable fraudulent conduct on their part concerning that voting process. Neither, incidentally, is there any evidence that they were soliciting bribes, which would lend itself to the suggestion that they were acting fraudulently with regard to the voting process.
84. Moreover, aside of the EO’s opinion that the World Sailing financial material produced during this investigation does not, itself, offer any evidence in support of the second complaint, there would be no purpose in causing some further, extensive production of evidence and review of World Sailing’s financial affairs (less still would it be reasonable or proportionate) given the EO’s decision that that there is no evidence to support an allegation that the outcome of the 2018 AGM voting process was improperly effected by the Respondents in any event i.e. if they were not fraudulently effecting the voting process, there is no basis to assume they were soliciting/receiving any bribes to do so.
85. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the second complaint.

### **Complaint 3:**

*“Respondents have discriminated between and among participants based upon gender, ethnic origin, physical size and religion in violation of Code Section 1.2(b) and IOC Article 1.4”*

86. Leaving aside the IOC Articles for the reasons given above, this complaint is made against paragraph 1.2(b) of the Code. “Physical size” is not a protected characteristic under that part of applicable version of the Code<sup>28</sup>, although the EO has approached this investigation with a wide

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<sup>28</sup> Mills & Reeve letter of 15<sup>th</sup> July 2019 quotes previous version of the Code at this point but that is not material.

interpretation of the Code in mind, in favour of the Complainants for investigative purposes, and notes that paragraph 1.2(b) prohibits discrimination against any person/group of any “other status” than those listed i.e. the list is not exhaustive<sup>29</sup>.

87. On the question of whether the result of the vote at the 2018 AGM was, or might yet be discriminatory in its effect, the observations in the final paragraph of page three of the Mills & Reeve letter of 15<sup>th</sup> July 2019 would appear to have force.
88. That is not decisive to this decision, however, as for the reasons at §§54-73 above and, in particular, §§58-59, the EO has decided that it would not be sustainable to bring a charge before the Ethics Commission, or issue a warning, in respect of a position the Respondents might have held during a democratic process within World Sailing that was merely supportive of a decision eventually arrived at through a democratic vote at the 2018 AGM.
89. It would be to allege that they have violated the Code of Ethics of a sports governing body that has itself, as a body, by a democratic process under its constitutional rules and procedures<sup>30</sup>, made a decision that happens to reflect a position that they supported, but over which they had no ultimate control. Moreover, it would be to invite the Ethics Commission, itself formed under the constitution of the governing body (albeit seeking to operate as an independent tribunal within), to find that the Respondents have violated the Code, despite the governing body itself ultimately adopting that decision to the same effect.
90. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the third complaint.

#### **Complaint 4:**

*“Respondents have attempted to influence competition, namely Olympic Sailing Events, in a manner contrary to best sporting ethics in violation of code section 1.2(f) and IOC Articles 2 and 10.”*

91. The basis of this allegation is wholly misplaced. Paragraph 1.2(f) only applies “*In the context of betting...*”, as is stated in the provision itself. It is concerned with competition-fixing in a betting context i.e. corruption in the competitive aspect of the sport itself. There is no complaint, or evidence about such misconduct in this matter.

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<sup>29</sup> That is not to say the Ethics Commission would find that it does incorporate “physical size” if this matter were to be litigated.

<sup>30</sup> See Regulation 23 of the 2019 Regulations

92. There is no evidence whatsoever that the Respondents have attempted to influence competition of any kind (in the sense of sporting competition, as opposed to allegations that they attempted to influence decisions as to which events should be entered into Olympic competition). This complaint is therefore misplaced both on a legal and factual basis.
93. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the fourth complaint.

**Complaint 5:**

*“Respondents have sought and, upon information and belief, conditionally indirectly received concealed benefits from equipment manufacturers in exchange for the promise of inclusion offshore keelboats as Olympic equipment in violation of Code section 1.3(a) and IOC Article 2”.*

94. This complaint is similar to the second complaint in terms of substance. There is a variation in the terms of the complaint, but it amounts to the Respondents being alleged to have “conditionally indirectly” received bribes.
95. The EO’s decision mirrors that in respect of complaint two. There is no evidence to support the substance of the allegation in this complaint and §§79-84 above apply equally here.
96. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the fifth complaint.

**Complaint 6:**

*“Respondents have acted without due care and diligence in performing their duties and have tarnished the reputation of World Sailing and when their conduct becomes more widely known will tarnish that reputation more severely in violation of Code Section 1.3(e) and OIC Article 1.1 and Article 10.”*

97. The nature of the Respondents’ conduct that is alleged to have been without due care and diligence, or which will, or is likely to tarnish the reputation of World Sailing has not been particularised in this complaint, but is taken as being that which is complained about throughout the Complaint as a whole.
98. The Complainants’ decision to bring an allegation on this basis, under paragraph 1.3(e) of the Code, exemplifies the issue identified at §§61-63 above; namely, if the overarching complaint of

fraudulent behaviour on the part of the Respondents for their receipt of bribes had merit, it would be impossible to conclude that any part of their conduct was merely “without due care and diligence”, albeit it would certainly have been to “tarnish the reputation of World Sailing”.

99. The generality of the Complainant as a whole is, at its highest and most serious, that the Respondents solicited or took bribes so as to illegitimately influence the vote at the 2018 AGM and then covered up knowingly erroneous results to suit their own interests. Whilst that, if correct, would certainly tarnish the reputation of World Sailing, it is not conduct that can likely be said to have occurred by a lack of due care and diligence as alleged in this complaint.
100. The EO has considered whether, aside of the generality of the Complaint, any lesser conduct on the Respondent’s part, such as approving the use of unreliable electronic voting equipment at the 2018 AGM (if that is what it was, which is not demonstratively established one way or the other on the evidence and cannot be further investigated due to limitations in the data), or their conduct at the AGM or thereafter, in terms of the result of the vote at that AGM being allowed to stand, might fall to be considered for charge or warning under the terms of this complaint and paragraph 1.3(e) of the Code, putting aside any suggestion that such failings were on account of fraud and/or receipt of bribed.
101. Such matters, however, have been considered generally above; see §60(v) & (vi) within the wider analysis of the voting processes at §§54-73. The result of that analysis is that there is no basis to sustain a charge or issue a warning against either of the Respondents in person, even under paragraph 1.3(e) of the Code.
102. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the sixth complaint.

**Complaint 7:**

*“By adopting Olympic Classes/Events that (a) discriminate against MNA’s having significant sailor populations weighing greater than 85 kilos and (b) discriminate against MNA’s whose prevailing religions prohibit an unmarried couple from overnight activities of any nature, including offshore sailing, Respondents have failed to work to maintain harmonious relations with State authorities, in accordance with the principle of universality and political neutrality and have otherwise improperly discriminated based upon physical attributes and religious beliefs in violation of code section 1.6(a) and IOC Articles 1.2, 1.4 and 1.5.”*

103. By way of the EO's request for production of evidence and information, dated 18<sup>th</sup> August 2019, the Complainants were asked to produce evidence of a breakdown of relations as between World Sailing and any State authorities, such that their relationship could no longer be described as being harmonious as a result of actions attributable to the Respondents, as would be necessary to prove a violation under this paragraph of the Code.
104. The response was to suggest that such relations will inevitably be so affected in the future. That is not evidence that would be capable of supporting the Complainants' contention that the Respondents' actions had effects such that they failed to maintain harmonious relations as between World Sailing and any State authority. Even insofar as the Complainants' opinions might be relevant on this issue, it is wholly speculative and is based upon a premise regarding alleged discrimination on grounds of (a) weight and (b) religion, as identified in the body of the complaint, that themselves do not give rise to grounds for charge or warning under the Code in any event, for the reasons given above as regards the inability to attribute the effect of decisions of votes at the 2018 AGM to the Respondents for the purposes of alleged violations of the Code.
105. Insofar as the discrimination-related parts of this allegation are concerned, they are repetitious of complaints one and three in any event, save that religion is referenced in this complaint (albeit paragraph 1.6(a) of the Code deals specifically with State relations and not alleged discriminatory behaviour). In any event, there is no evidence of the conduct of either of the Respondent's conduct giving rise to issues of religious discrimination in this case, should this complaint be considered against any other provision of the Code.
106. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the seventh complaint.

### **Complaint 8:**

*“The Governance of World Sailing under the administration of respondents has been conducted in violation of IOC Article 11 because it has not been transparent, responsible and accountable to all Olympic Parties, namely MNA's and the recognized International Classes; it is not been conducted in a manner that would permit World Sailing to be able to serve the primary purpose for which it received \$15.6 Million in funds from the IOC, namely “Olympic purposes”; and instead has squandered those funds on lavish new London headquarters, and other increased an inappropriate overheads used to pursue various and sundry commercially motivated (and ultimately unsuccessful) attempts to “create” a glitzy new sport with primary emphasis on technology and increased spectator related revenues while failing to celebrate the athleticism and skills of the sport of sailing and ignoring Olympic tradition”.*

107. This complaint does not reference any provision of the Code.
108. The Ethics Commission of World Sailing could not find a charge proved – and thus no warning should be issued by the EO either – for conduct that is alleged to have violated legislative provisions of other organisations (the IOC in this example) over which it has no jurisdiction, for the reasons given at §§37-43 above.
109. If the IOC were to find that the Respondents were liable for any misconduct by reference to IOC rules, then an issue might arise as to whether such a finding could place the Respondents in violation of the World Sailing Code by reference to the IOC finding itself, which would remain a matter for the Ethics Commission come that stage.
110. But the EO cannot decide to lay a charge before the Ethics Commission, under the World Sailing Code, alleging ethical misconduct in contravention of the IOC Articles. There is simply no jurisdiction for such a course to be taken and, in any event, no evidential basis to support any such complaint (which amounts more to a matter of comment than complaint in its current form).
111. In any event, no evidence has been produced that would be capable of sustaining an allegation based upon the substance of this complaint, even if it were framed so as to allege a violation of the World Sailing Code of Ethics.
112. The annual audits of World Sailing accounts are approved by its Annual General Meeting and decisions of the type referenced in this complaint are not reached by the Respondents acting alone – they are made in conjunction with the Board, Council, other committees and prescribed voting processes.
113. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the eighth complaint.

**Complaint 9:**

*“By squandering the \$15.6 million of 2016 Olympic Proceeds and thus rendering World Sailing financially incapable of the fulfilling its obligations to the IOC in respect of the 2020 Games, Respondents violated IOC Article 12 by using that \$15.6 Million for purposes other than “Olympic Purposes”.*

114. Paragraphs 107-112 above apply and are not repeated.

115. Additionally, this complaint is based upon the alleged “squandering” of Olympic Proceeds by the Respondents, acting on World Sailing’s behalf, such that World Sailing was incapable of fulfilling its obligations to the IOC in respect of the 2020 Olympic Games. That any money was “squandered” is a matter of comment/opinion that has no evidential basis so as to raise issues against any provision of the Code, even putting aside that none is referenced in this complaint.
116. Accordingly, no grounds to charge or issue a warning against either of the Respondents arise out of the conduct referred to in the ninth Complaint.

### **FURTHER COMPLAINTS**

117. By letter dated 16<sup>th</sup> July 2019 (Appendix 2), responding primarily to the EO’s invitation for the Parties’ submissions as to the permissible scope and extent of the investigation, the Complainants raised two further complaints. They were entitled, “*Improper Reimbursement of Mr. Andersen’s Campaign Expenses by World Sailing*” and “*Laser Class*”.
118. Those complaints are not within the scope of the EO’s appointment or investigation, as to which see §§1-2 and §§24-26 above, and, in any event, were not relevant to the investigation to which this decision relates, or supported by evidence. The nature of those complaints and suggestions as to where evidence might be obtained in support of them by the EO fundamentally misunderstands the role and powers of the EO, as was set out by the EO in Appendix 1 and with which the Complainants agreed on page one of the very letter (Appendix 2) by which these additional complaints were raised. The Ethics Commission Rules of Procedure cannot exist to allow any complaint to be raised, without an evidential basis, so that the EO must then engage in a limitless investigation - come fishing exercise - to see what might be turned up, which is what large parts of the Complaint in this case invited the EO to do.
119. No individuals were interviewed in person in connection with this investigation, because the indisputable (and effectively agreed) documentary evidence established that there was no tenable basis to allege that either Respondent had misconducted themselves, by reference to the Code, with regard to voting at the 2018 AGM. The documentary evidence suggests to the contrary and speaks for itself.
120. That being the case, the particularised complaints 1-9 were unsustainable and so interviewing any of the Parties for further information was unnecessary. For the same reasons, there was no need to require further production of financial material from World Sailing and/or any other material that was oft suggested by the Complainants as being a source of possible evidence to which the EO should look in support of the Complaint.

121. The Complaint has been considered at its highest on the documents provided to the EO and the Complainants have been given the opportunity to provide further evidence in support of it, in response to the EO's request for further information and evidence. Given the content of the response, one cannot deduce how holding interviews with the Complainants, or any other witness(es), might have resulted in a greater quality of evidence being obtained in support of the Complaint than was provided on the papers, where one would expect those bringing such complaints to set out the highest watermark of their case. As such, the investigation was concluded.

### CONCLUSION

122. It follows from the above that the EO has decided that there is no basis to take action so as to issue any warnings or charges pursuant to Regulation 36.10 (b) or (c), in respect of the Complaint as a whole, or any part of it, whether by reference to the provisions of the World Sailing Code of Ethics cited specifically in the Complaint itself or by reference to the general alleged conduct complained of, as against any other provision of the Code as the EO might have seen fit<sup>31</sup>.

123. The consequence is that the EO decides to take no further action, pursuant to Regulation 36.10(a), and that decision is hereby communicated to the Parties.

124. A copy of this decision should be sent to the Chairman of the World Sailing Ethics Commission to ensure full compliance with Regulation 36.11.

3<sup>rd</sup> December 2019



Craig Harris

(Appointed Ethics Officer)

Furnival Chambers

London, EC4A 1 JQ

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<sup>31</sup> See §§35-36 above