

**BEFORE THE ISAF DISCIPLINARY
COMMISSION**

ISAF CASE 2013/008/DC

IN THE MATTER OF:

MATTHEW MITCHELL (NZL)

34th AMERICA'S CUP



DECISION

1. DECISION

1.1 The decision of the Commission in this case is attached.

2. ORDERS

2.1 For the reasons set out in its Decision, the Commission orders:

- (a) pursuant to the Rules of Procedure 2.6, and under RRSAC Rule 69.2(a), there shall be no further proceedings in this matter, the case is considered closed, and there is no finding by the Panel as to the truth or otherwise of the AC Jury Report or of any breach by Mr Mitchell of the RRSAC;
- (b) pursuant to Rule of Procedure 13.2, the Respondent may make a submission no later than Thursday 15 January 2015 as to whether there is good reason not to publish this decision; and
- (c) the Chief Executive Officer is to communicate this Decision forthwith.

**Charlie Manzoni QC
Panel Chairman**

ISAF Disciplinary Commission

8 January 2015

INTRODUCTION

1. On 7 September 2013 the Jury of the 34th America's Cup ("**the AC Jury**") sent a report ("**the AC Jury Report**") to the International Sailing Federation ("**ISAF**"), and 3 Member National Authorities of ISAF ("**MNAs**"), in accordance with the Racing Rules of Sailing (AC Edition) ("**RRSAC**") rule 69.2(c). The reference to RRSAC rule 69.2(c) in the AC Jury Report is, in the Panel's view, a typographical error and ought to be read as a reference to RRSAC rule 69.1(c).
2. The AC Jury Report concerns a matter which is known as "**AC Case 31**" and relates to allegations of gross misconduct¹ by four members of Oracle Team USA ("**OTUSA**"). Without descending to the detail of all the allegations, the AC Jury Report concerns modifications to the forward king posts of AC45 boats during June and July 2012, in circumstances where the four members knew that such modifications were in breach of the AC45 Class Rule.
3. During August 2013 the AC Jury held various meetings, and issued various Jury Notices, in respect of these matters. Ultimately the Jury reached conclusions concerning Mr Mitchell, as set out in Jury Notice JN116, that:
 - 3.1. He was involved in the assembly of boat BAR after his arrival in San Francisco on 15 July 2012.
 - 3.2. He was aware that filling a king post was on the BAR joblist.
 - 3.3. He filled the forward king post of boat BAR with resinous material.
 - 3.4. The AC Jury was comfortably satisfied that this conduct was a gross breach of a rule and of good sportsmanship.
4. Consequently it reached a finding of a breach of gross misconduct and it excluded Mr Mitchell from sailing on a yacht in the Match of the 34th America's Cup until 4 races have been completed. In addition, as is required under RRSAC rule 69.1(c), the AC Jury issued the AC Jury Report to the Member National Authority of Mr Mitchell and to ISAF. The Jury recommended that no further action be taken by ISAF or the MNA.
5. Under the current ISAF Regulations 8 and 35.1 the appropriate body of ISAF to address the AC Jury Report is the Disciplinary Commission, and on 30 September 2013, in accordance with its published procedures, the Disciplinary Commission appointed a Panel ("**the Panel**") to address the AC Jury Report insofar as it relates to Mr Mitchell. That position was subject to challenge by Mr Mitchell, who contended that the Disciplinary Commission has no jurisdiction. As a result, the first task of the Panel was to decide whether or not it has the jurisdiction to address the AC Jury Report insofar as it relates to Mr Mitchell. It did so by way of its Jurisdictional Decision referred to in paragraph 10 below.
6. The Panel consists of Mr Charlie Manzoni QC (HKG) as Chairman and Professor Jan Stage

¹ Throughout this decision we use the phrase "gross misconduct" as a shorthand for a finding of a gross breach of a rule, good manners or sportsmanship or bringing the sport into disrepute, which is the conduct that RRSAC rule 69 is aimed at preventing.

(DEN) and Mrs Ana Sanchez del Campo Ferrer (ESP).

7. The same Panel was also appointed to consider the AC Jury Report insofar as it relates to the other three members of the team, but clearly the Panel must address the AC Jury Report individually in respect of each sailor, as different allegations, and different considerations, apply to each of them. Although at one stage it was thought that it might be appropriate to consider all four matters contemporaneously, it soon became apparent that it would not be expeditious to delay the resolution of matters relating to Mr de Ridder pending the decisions from Yachting New Zealand in relation to Mr Walker and Mr Mitchell. Consequently the Panel has proceeded independently in respect of all four sailors.
8. This is not the first decision of the Panel to be issued concerning the AC Jury Report. It has previously issued decisions concerning Mr de Ridder and Mr Ruthenberg. As mentioned, it has also published a jurisdictional decision in this case and, at the same time as issuing this decision, it is also issuing a final decision in Mr Walker's case.
9. The AC Jury also went on, in a different hearing, to consider the position under Article 60 of the America's Cup Protocol, which Article seeks to protect the integrity of the America's Cup and of the sport of sailing. In Jury Notice JN117 the AC Jury penalised OTUSA, under Articles 60 and 15.4, one point for each of the first two races of the Match (as defined in the Protocol) in which they would otherwise score a point. That decision is a decision made under the Protocol and is not the subject of any consideration by the Panel, save that the record of that decision is one of the background facts that informs the circumstances and seriousness of the incidents that the Panel has to address.

PROCEDURAL HISTORY

10. The procedural history of this matter has been set out in the Panel's Decision on Jurisdiction in this case, dated 16 June 2014 ("**the Jurisdiction Decision**"). However, for the sake of completeness of this decision, that procedural history is repeated and updated to reflect the position as at the date of this Decision.
11. The AC Jury, consisting of David Tillett IJ (AUS) as Chairman, John Doerr IJ (GBR), Josje Hofland IJ (NED), Graham McKenzie (NZL) and Bryan Willis IJ (GBR), issued the AC Jury Report to ISAF, and the MNAs Yachting Australia (in respect of one member, Mr Ruthenberg), Yachting New Zealand (in respect of two members, namely Mr Walker and Mr Mitchell) and Koninklijk Nederlands Watersport Verbond (in respect of Mr de Ridder) on 7 September 2013.
12. In the AC Jury Report, the AC Jury summarised as against each member the findings it had made following its hearings, recorded the decision it had reached, the penalty it had imposed within its own jurisdiction (which is an "event" jurisdiction) and either made a recommendation to ISAF and the relevant MNA that no further action be taken, or expressly declined to make any such recommendation. It attached Jury Notices JN116 and 117.
13. It became apparent to the Panel during the course of the proceedings in respect of Mr de Ridder that Jury Notices other than simply JN116 and JN117 had some relevance to the matters under consideration, and as a result the Panel has visited the AC Jury Website at <https://noticeboard.americascup.com/jury/jury-notice>, on which all Jury Notices that are not

restricted as to their publication are published. The Panel has downloaded and read the following additional Jury Notices 101, 103R, 106, 108R, 110R, 114 and 115R.

14. The Panel has also read the entire transcript of the hearings before the AC Jury on 26 and 27 August 2013. These transcripts were originally provided to the Panel in the case concerning Mr de Ridder under the cover of confidentiality requested by those giving evidence, and subsequently ordered by the AC Jury. The transcripts and evidence given by the witnesses to the AC Jury have also been extensively referred to in the MNA Decision (as defined in paragraph 16 below), and have been provided to the Panel by Mr Mitchell as part of his submissions.
15. By letter dated 20 September 2013, ISAF notified Mr Mitchell of the appointment of the Panel, and enclosed a copy of Rules of Procedure and the directions given by the Vice-Chairman of the Disciplinary Commission. In those directions, the Disciplinary Commission appointed the Panel, and adjourned the proceedings pending receipt of the decision of Mr Mitchell's MNA, (Yachting New Zealand, "YNZ")) under RRSAC 69.2(a). A similar direction had been made in respect of all four cases under consideration of the Panel relating to the AC Jury Report.
16. The decision of YNZ ("**the MNA Decision**") was received on or around 2 April 2014, and is dated 2 April 2014. In the MNA Decision, YNZ relied upon a report prepared by commissioners that it had appointed, and adopted the commissioners' report as its conclusions. In this decision we shall refer to the commissioners' report as "the MNA Decision". In the MNA Decision, YNZ concluded that it would not be satisfied that Mr Mitchell had filled the forward king post of boat BAR with resinous material, and consequently it took no further action.
17. By letter dated 7 May 2014, ISAF informed Mr Mitchell of the Panel's decision to proceed towards a determination of the case against him. The Panel also decided to, and did, grant YNZ Participant status under Rule 6.2 of the Rule of Procedure.
18. By directions issued on the same date, the Panel ordered:
 - a. YNZ to submit to ISAF any submissions it may wish to make on the AC Jury Report by 1700 UTC on 16 May 2014.
 - b. The Respondent to submit to ISAF his Response to the AC Jury Report by 1700 UTC on 23 May 2014, including any evidence he wished to rely upon in Response.
 - c. The AC Jury to submit to ISAF any additional material concerning the AC Jury Report in the light of the comments made by YNZ and the Response and evidence given by the Respondent that the AC Jury wished to place before the Panel, by 1700 UTC on 30 May 2014.
 - d. The Respondent to submit to ISAF any final Reply submissions or evidence he wished to rely upon or place before the Panel in the light of the foregoing by 1700 UTC on 6 June 2014.
19. By email dated 8 May 2014 to ISAF YNZ indicated that it wished to treat the MNA Decision

as its submission.

20. By email dated 13 May 2014 to ISAF Mr David Walters, acting on behalf of Mr Mitchell, sought an extension of time for service of his final submissions, and also sought clarification as to the basis of the jurisdiction of ISAF, reserving the right to challenge the jurisdiction if it could not be agreed.
21. By letter dated 14 May 2014 ISAF replied to Mr Walters on behalf of the Panel, granting the extension of time sought and giving some of the clarifications requested. The Panel requested Mr Mitchell to articulate any challenge to jurisdiction that he wished to make so that the Panel could address it.
22. By letter dated 21 May 2014 Mr Walters, on behalf of Mr Mitchell, articulated his concerns over jurisdiction, although still reserved the right to question jurisdiction if the clarifications sought were not received or agreement was not reached.
23. By email dated 24 May 2014 ISAF, on behalf of the Panel, stated that the Panel was not in a position to “negotiate” jurisdiction, and either it had jurisdiction or it did not. In the circumstances it determined to treat Mr Walter’s letter of 21 May 2014 as a challenge to the jurisdiction. The Panel indicated that it would address jurisdiction as the first part of its main decision.
24. By letter dated 26 May 2014 Mr Walters confirmed that he was not seeking to negotiate jurisdiction, but that in the light of Rule 3.2 of the Rules of Procedure he wished to have the matter resolved prior to making any submissions on the merits. The Panel accepted that position by ISAF’s email dated 28 May 2014 and determined to address the jurisdictional challenge as a preliminary matter.
25. By the Jurisdiction Decision the Panel decided that it did have jurisdiction, and it ordered that:
 - (a) the Respondent was to submit to the Chief Executive Officer his Response to the AC Jury Report by 1700hrs UTC on 25 June 2014 (such Response to include any evidence he wishes to rely upon).
 - (b) the International Jury was to submit to the Chief Executive Officer any additional material concerning the AC Jury Report in light of the comments made by Yachting New Zealand and the Response and evidence of the Respondent that the International Jury wishes to place before the Panel by 2 July 2014.
 - (c) the Respondent was to submit to the Chief Executive Officer any final Reply submissions or evidence he wishes to rely upon or place before the Panel in light of the foregoing by 9 July 2014.
26. As a result of various requests for extension of time, Mr Mitchell’s final submissions were served on 15 August 2014. At, or around, that time it became clear that Mr de Ridder was seeking to appeal the Panel’s decision relating to him (although more strictly the Review Board’s review of the Panel’s decision) to the Court of Arbitration for Sport, and that the appeal in that case would raise various challenges to the jurisdiction of this Panel and the procedure adopted in relation to AC Case 31 more generally, which may be equally applicable to this case. On the basis that the Court of Arbitration for Sport was then expected to hand its decision down around the middle of October, and Mr Mitchell had expressly asked the Panel not to

“rush” any decision in his case as there was no urgency, the Panel decided to delay this decision until it had seen the decision of the Court of Arbitration for Sport.

THE CAS DECISION AND ITS CONSEQUENCES

27. On 11 December 2014 the Court of Arbitration for Sport (“CAS”) handed down its decision, although that decision was only published, and received by the Panel, on 18 December 2014. In that decision the CAS found that:

27.1. ISAF did have jurisdiction to make the decisions that it had made concerning Mr de Ridder;

27.2. a proportionate sanction for Mr de Ridder was 18 months of ineligibility, from September 2013.

28. In relation to procedure, the CAS recognised that the hearing before it was a *de novo* hearing and consequently any procedural irregularities in the bodies from whose decisions an appeal was brought “fade to the periphery” if indeed they do not disappear beyond it. However in the light of submissions that had been made by Mr de Ridder about the procedure which was adopted in his case, the CAS set out various non exhaustive propositions which underpin the essential requirements of fairness and ensure that justice is not only done but is seen to be done:

“1. *There should be a clear demarcation line between the roles of Investigator, prosecutor and Adjudicator -in short a legal separation of powers.*

2. *There should be a full disclosure of all material in the possession of the prosecution which may be of assistance to the person charged with a disciplinary offence.*

3. *The material on which the adjudicator is invited to base its verdict should be clearly defined to the person charged, and, as far as possible, the adjudicator should be shielded from material potentially prejudicial to the person charged but on which the prosecution does not intend to rely.*

4. *There should be a clear demarcation between persons who sit at first instance and those who sit on any bodies to which first instance decisions may be appealed within the same disciplinary structure.*

5. *A person charged should be informed of and given access to the procedures to be applied in his or her case.*

6. *No change to a disciplinary procedure should be introduced with retrospective effect and less favourable to the person charged.”*

29. At paragraph 112 of its Decision, the CAS stated that:

“The Panel does not consider it necessary or indeed desirable to comment on the extent to which the above principles may not have been observed in the present case, (though it is aware of the Appellant’s lively concerns in this context, some of which at least it

presently shares) because the Respondent was not invited to explain its position other than by way of written submissions which did not specifically or comprehensively engage with these points. It contends itself with noting that the Respondent gave an express (and welcome) undertaking that it would review its own procedures in the light of any observation of the Panel and draw them to the attention of other bodies which administer discipline within the historic sport of sailing.”

THE APPLICATION OF THOSE PRINCIPLES TO THIS PANEL’S PROCEDURES

30. This Panel takes very seriously the requirements of fairness and justice. Having considered the matter carefully in the light of the clarity with which the CAS has set out its non-exhaustive propositions, this Panel does not consider that its own procedures or its constitution are contrary to any of those propositions. In particular:

1. THERE SHOULD BE A CLEAR DEMARCATION LINE BETWEEN THE ROLES OF INVESTIGATOR, PROSECUTOR AND ADJUDICATOR -IN SHORT A LEGAL SEPARATION OF POWERS.

This Panel has not undertaken any investigations itself. The Panel has conducted no interviews or independent investigations, and is entirely reliant upon the material which has been placed before it by the parties, save for the Jury Notices which are publically available, and which are expressly identified above. This Panel sits only as Adjudicator and not in any other role.

2. THERE SHOULD BE A FULL DISCLOSURE OF ALL MATERIAL IN THE POSSESSION OF THE PROSECUTION WHICH MAY BE OF ASSISTANCE TO THE PERSON CHARGED WITH A DISCIPLINARY OFFENCE.

The concept of “the Prosecution” is one which does not sit comfortably within the context of the ISAF disciplinary procedures, as there is no identifiable body which could be defined as “the Prosecution”. Reports are made, and considered on their merits by reference to the material that any participant wishes to refer to. However, notwithstanding that, insofar as this Panel is concerned, it has been astute to ensure that there is full disclosure of all material before it.

3. THE MATERIAL ON WHICH THE ADJUDICATOR IS INVITED TO BASE ITS VERDICT SHOULD BE CLEARLY DEFINED TO THE PERSON CHARGED, AND, AS FAR AS POSSIBLE, THE ADJUDICATOR SHOULD BE SHIELDED FROM MATERIAL POTENTIALLY PREJUDICIAL TO THE PERSON CHARGED BUT ON WHICH THE PROSECUTION DOES NOT INTEND TO RELY.

Subject to the point made about there being no “Prosecution”, throughout this case this Panel has been astute to ensure compliance with this concept, to the extent of requiring the parties to send and identify all material which is relevant even if that has resulted in a degree of duplication. Indeed, by letter dated 7 May 2014 to the parties the Panel, through ISAF, stated that:

“The Panel has already considered two earlier cases related to this incident, and as a result it has received various items of evidence which may be relevant. However, so as to ensure that the Panel is working off evidence that is available to all parties in this case, and that there are no false assumptions by anybody as to what may or may not already be in the possession of the Panel, will all parties please assume that the Panel has nothing other than the AC Jury Report, and the body of the Yachting New Zealand Commissioners report, which was adopted as the MNA Decision. Hence the Panel requests that all parties should please provide to the Panel every item of evidence that it wishes the Panel to consider as part of its process in respect of this case. The Panel recognises that this may result in a degree of duplication to it of material it has already seen, but by this process that we can ensure that a fair and transparent process is maintained with no room for confusion as to what is being referred to at any stage. We would suggest that Mr Mitchell should ensure that all material that was before the Yachting New Zealand Commissioners should be placed before the Panel.

The Rules of Procedure also set out this principle as one of the Overriding Objectives, at Rule 2.4(b).

4. THERE SHOULD BE A CLEAR DEMARCATION BETWEEN PERSONS WHO SIT AT FIRST INSTANCE AND THOSE WHO SIT ON ANY BODIES TO WHICH FIRST INSTANCE DECISIONS MAY BE APPEALED WITHIN THE SAME DISCIPLINARY STRUCTURE.

This issue was raised by Mr de Ridder in respect of the jurisdiction of the Panel in his case, and it was addressed by this Panel in paragraphs 93 to 96 of its Liability Decision in the case of Mr de Ridder. The Panel does not believe that the structure of the Panel is in breach of this principle of fairness.

5. A PERSON CHARGED SHOULD BE INFORMED OF AND GIVEN ACCESS TO THE PROCEDURES TO BE APPLIED IN HIS OR HER CASE.

Insofar as this case is concerned, all parties were given copies of the Rules of Procedure by the first letter from ISAF.

6. NO CHANGE TO A DISCIPLINARY PROCEDURE SHOULD BE INTRODUCED WITH RETROSPECTIVE EFFECT AND LESS FAVOURABLE TO THE PERSON CHARGED.

Insofar as this Panel is concerned, there is no breach of this principle. This issue has been analysed in considerable detail in paragraphs 54 to 82 of the Panel’s Jurisdictional Decision in relation to Mr Mitchell.

31. Consequently the Panel concludes that its own procedures do not infringe upon the principles of fairness and justice and it is open to the Panel to continue with this matter according to the Rules of Procedure.

THE AC JURY

32. In relation to the position of the AC Jury and its own procedure, the Panel notes that the CAS did not reach any conclusion as to whether or not the procedure adopted before the AC Jury

constituted a breach of the requirements of fairness, although there is some indication that, without the benefit of any party addressing the issue before it, it did have some concerns. The CAS did not consider it necessary to address that issue because it was hearing live evidence and conducted a *de novo* hearing which would cure any procedural irregularity in the bodies below. Further it is clear from the CAS decision that the parties did not fully address the CAS on questions such as whether the AC Jury was a field of play decision (to which different considerations apply), or whether the procedures adopted were in fact in breach of the principles of fairness that the CAS has set out. Consequently it is not possible to determine from the CAS decision whether or not the procedures before the AC Jury breached any applicable requirements or not.

33. But before the Panel relies upon the evidence that was adduced in the AC Jury hearings, and does not conduct a new hearing itself, with live evidence, it must make an assessment of the suitability of doing so, and that assessment must include an assessment of the fairness of the AC Jury proceedings as against the various propositions outlined by the CAS. If there is a risk that the evidence contained within the transcripts of the AC Jury hearing was obtained by a procedure which in any way breached the propositions set out by the CAS, the interests of fairness require that this Panel should not rely upon those transcripts, but should proceed with an entire *de novo* hearing.
34. The Panel has already addressed some of the procedures before the AC Jury in relation to Mr de Ridder's case. In particular it addressed the criticisms which Mr de Ridder had raised before it, and concluded that the matters which he then raised did not breach the requirements of fairness. On a re-assessment of those issues with the clarity with which the CAS has set out the non exhaustive principles, the Panel believes that its conclusions on the matters then raised by Mr de Ridder remain valid.
35. The Panel is not privy to the complaints raised by Mr de Ridder before the CAS in relation to the AC Jury procedures. It is aware that Mr de Ridder's complaints and submissions did not always remain constant throughout the process before the Panel, and it is possible that the criticisms that he made before CAS are different to those which were raised by him before the Panel. Consequently it is not possible to ascertain whether the concerns which the CAS "*presently shares*" in relation to the AC Jury process relate to issues on which the Panel reached any conclusions, or different issues.
36. However, it is clear from the CAS decision, that the evidence before the CAS has identified a matter of which the Panel was not aware when it was addressing Mr de Ridder's case, namely that there was a record of an interview with Ms Anne Le France which was before the AC Jury, but was not made available to the parties. According to the CAS decision, that note on the one hand finds Mr de Ridder a credible witness (contrary to the conclusion that the AC Jury came to), but on the other hand corroborates the evidence of Mr Ruthenberg, and demonstrates that of Mr Walker as inconsistent.
37. The Panel had previously proceeded upon the understanding that lawyers for the participants had been present at all interviews, and had the notes of those interviews available to them (or at least would have had them available had they asked for them). That understanding is expressly recorded in this Panel's decision in relation to Mr de Ridder. However, the Le France note seems to fall into a somewhat different category, and it is clear that it was relevant

material which appears not to have been made available to the parties. The Panel did not know about this until the publication of the CAS decision.

A DE NOVO HEARING

38. The Panel need not, and does not, reach any conclusion as to whether or not the existence of the Le France note, and the way it was treated by the AC Jury, does in fact amount to a breach of the CAS propositions. But, in the light of the CAS decision in Mr de Ridder's case, and the information which it has provided as to the material placed before the AC Jury, this Panel takes the view that the only safe procedure for it to adopt would be to conduct an entirely *de novo* hearing, thereby avoiding the risk that it was relying on evidence which was obtained in a procedure which breached the principles of fairness.
39. Before embarking on a *de novo* hearing, the Panel must consider the appropriateness of doing so. There are various factors that will inform that consideration, including:
- 39.1. The time which has elapsed since the alleged breach of the RRSAC;
 - 39.2. The cost and practicality of conducting such a hearing;
 - 39.3. The potential sanction which might be imposed in the event that the Panel concludes that AC Jury Report is true.
 - 39.4. The effects of any hearing, and findings of the Panel, upon both the sport of sailing, and Mr Mitchell personally.

Time

40. The alleged breach of the RRSAC took place in June and July 2012. It came to light in September 2013. The events therefore took place over 2 years ago, and have been publically known for over 12 months. In the context of a sports dispute that is a very long time after the event to commence a new hearing for the purposes of considering a new sanction, as opposed to a new hearing by way of appeal.

Cost and Practicality

41. The AC Jury hearing heard from 14 witnesses. The CAS Panel heard from 9 witnesses. Inevitably it would be necessary for the Panel to hear from a similar number of witnesses in order properly to investigate the matter entirely afresh. The MNA Decision has made reference to at least 2 other potential witnesses, at least one of whom was invited to give evidence to the MNA but declined to do so. There is a realistic possibility that some relevant witnesses would decline to assist in further proceedings by the Panel and there is no means by which the Panel can require them to give evidence. Inevitably there would be a cost burden on ISAF to conduct a hearing, even if only to gather the Panel in one place to conduct the hearing. There is also likely to be a cost burden on Mr Mitchell.

Potential Sanction

42. The CAS Decision has stated that an appropriate sanction for Mr de Ridder was 18 months of ineligibility from September 2013. On the basis of the facts set out in the AC Jury Report, that would be likely to set the outer limits of a proportionate sanction in relation to AC Case 31. Consequently, even if the Panel were to conclude that the facts found against Mr Mitchell were true, the maximum sanction would be less than (or equal to) 18 months from September 2013. As a result, it is almost inevitable that the period of any proportionate sanction against

Mr Mitchell would, by now, have expired (or be about to expire). In such circumstances any sanction would not be effective to protect the sport, save by way of indicting to participants that cheating is not to be tolerated and will be pursued to the natural conclusion. That indication may have some benefit to the sport as a whole, but needs to be weighed against the other considerations.

The effects of a hearing and any findings

43. The Panel notes that in his final submissions Mr Mitchell has described the detrimental impact that the events surrounding this case have had on him and his family. The final paragraph of his submission states:

“Procurement of justice for me, after the longest and most degrading year of my life would be some recompense for the hardship endured.

Exoneration would go some way to restoring my dignity. My family would also benefit greatly by the removal of the attached stigma this unsavoury episode has created. An additional corollary would be the restoration of my faith in the ability of ISAF to establish the truth.”

44. Thus it is clear that Mr Mitchell wishes the Panel to proceed, and to exonerate him.

45. However given that the investigation by this Panel is a new investigation in relation to a different jurisdiction to that already exercised by both the AC Jury and the MNA, there has been no finding by this Panel that Mr Mitchell has breached any rules and so technically, in relation to this Panel’s jurisdiction, there is no need for exoneration. Mr Mitchell recognises the reality of this proposition when, in his final submissions, he states *“I fully understand that the penalty that was imposed at the time cannot be reversed.”*. Notwithstanding this technicality the Panel recognises that from Mr Mitchell’s personal perspective and possibly from a public perception perspective a finding of no breach by this Panel may have a beneficial effect for him.

46. On the other hand there is inevitably a risk to Mr Mitchell that the Panel will reach a conclusion that he did indeed breach the RRSAC, and that he is liable to further sanction by ISAF notwithstanding the recommendation of the AC Jury that no further action be taken. Whilst, as pointed out above, any further sanction is likely to be practically ineffective, the effect of a finding against Mr Mitchell is likely to have an additional detrimental effect upon him and his family personally. The Panel makes no assumption as to what effect on public opinion there may be from such a finding.

47. Insofar as the sport of sailing is concerned, in this context, its interests are served by supervising the rules, adjudicating disputes and taking appropriate disciplinary action including the imposition of appropriate penalties (see paragraph (c) of the Aims of ISAF as set out in the Constitution). It must do so whilst demonstrating fairness and justice in relation to its disciplinary procedures. As the Panel has noted above the time for any proportionate and effective sanction is now probably passed in this case and consequently there may be little further benefit to the sport in proceeding further with this matter. As for fairness and justice in relation to the disciplinary procedures the sport must be seen to react appropriately to situations as they develop. That includes halting disciplinary proceedings if that is appropriate.

48. The jurisdiction to halt proceedings if appropriate is inherent with the Rules of Procedure, Rule 2.6 and the overriding objective in Rule 2.4(a), as well as in RRSAC Rule 69.2(a).

CONCLUSION

49. In the light of all of the above factors the Panel concludes that, notwithstanding Mr Mitchell's request for the Panel to exonerate him, it would be inappropriate to recommence a fresh hearing into this unfortunate episode so long after the event.
50. Consequently, pursuant to the Rules of Procedure Rule 2.6, and under RRSAC Rule 69.2(a), the Panel orders that there shall be no further proceedings in this matter, the case is considered closed, and there is no finding by the Panel as to the truth or otherwise of the AC Jury Report or of any breach by Mr Mitchell of the RRSAC.

ENDS