

Annex 2 – Response

Josep M Pla

18 May 2020

By email only: jspmpla@gmail.com

Dear Mr Pla,

RE: Complaint by Scott Perry and Gary Jobson
Our Client: Mr Kim Andersen

We write to you on behalf of our Client, further to your email correspondence dated 2 May 2020 ("**Email**"), in which you, in your capacity as the appointed Ethics Officer ("**EO**") in this matter invited our Client to submit his comments in response to the complaint ("**Complaint**") filed by Scott Perry and Gary Jobson (together the "**Complainants**") against him before the World Sailing Ethics Commission.

At the outset, we must express our surprise and concerns regarding the handling of our Client's correspondence with the Ethic's Commission regarding your appointment. We would have expected Mr Neupert to have considered these seriously rather than to merely term them as "*interference*". To that end, we would have expected that he would have asked you to respond. Our client's rights are fully reserved in this regard.

No matter who fulfils the role of EO, this is our Client's response.

We note the contents of your Email and that you requested the attachments by 8 May. It is our fault, not our Client's that these are late. We felt that they should be produced together with the response, as the response effectively navigates the EO through these. We hope that you will understand this approach. We were also grateful for the suggested extension to 18 May, but have managed to take instructions and to prepare the response by today, to comply with the second deadline.

A. Background facts

Prior to addressing the substance of the Complaint, it would be beneficial to set out the background facts which gave rise to this dispute. This will also allow us to provide you with all the relevant emails which led to the Complaint. The background facts are as follows:

- On 18 February 2020, Sailing Illustrated published a video in which host Tom Ehman made incorrect allegations regarding, *inter alia*, the finances of World Sailing (“**Video**”).¹
- On 26 February 2020, our Client sent an email to the Board members of World Sailing (“**Board**”) – including the Complainants – informing them about the Video. Our Client suggested that the Board discussed this issue at its next meeting. A copy of this email is included as **Annex 1**.
- On 26 February 2020 (i.e. later that same day), Gary Jobson replied to the above email stating that he had not spoken to Tom Ehman or been involved in the Video. A copy of this email is included as **Annex 2**.
- On 27 February 2020, our Client sent an email to the Board listing out various session times from the Video, in which he considered that relevant statements were made. Our Client did this to assist the Board (including the Complainants) by directing them to the relevant comments in the Video. A copy of this email is attached as **Annex 3**.
- On 28 and 29 February 2020, a two day Board meeting was held in London, England. At the Board meeting, the issue regarding the Video was discussed. On the first day of meetings (i.e. 28 February 2020) the Complainants both stated that they had not yet watched the Video at that point in time but they both would do so. The Board agreed to draft and send a letter to Mr Ehman stating that the Complainants were not the source claimed in the Video, and that Board did not appreciate the attack on World Sailing and them. It agreed that, as there was no CEO of World sailing at that moment in time to undertake the task, our Client would draft the letter and forward it to the rest of the Board, then upon receiving feedback on the draft letter it would be amended if necessary and then be sent.
- On 29 February 2020 at 9.01am, as agreed the day before our Client sent an email to the Board attaching a draft letter for the Complainants to review and amend. We note that this email was sent prior to the Board meeting later that day. A copy of this email is attached as **Annex 4**. In this email our Client stated:

“I would propose to Scott and Gary to adjust and amend the letter to their liking, but as agreed the letter should make it clear to Tom Ehman the he is not correct when using the names of World Sailings board members as proof for misinformation. Please let the board know when the letters are send in order for the board to be on the same page.”

We note that our Client drafted the letter to Tom Ehman in first person (i.e. using “I” instead of “we”) as he considered that both the Complainants might want to send their own letter. He also referred to “letters” in this email. Further, as is evident from the above, his intention was for the Complainants to amend the letter(s) as they saw fit and for them to send the letter to Mr Ehman.

- During the course of the Board meeting on 29 February 2020, Mr Perry sent our Client an email with a marked-up/amended version of the draft letter. Importantly, as you would see from the marked up version of this letter, the changes from Mr Perry included changing “I” to “we” – suggesting that it was a joint letter from the Complainants. Mr

¹ The video can be found on the following link: <https://www.facebook.com/SailingIllustratedBlog/videos/203966347466731/>

Jobson was copied into this email. The email from Mr Perry did not have any other comments or notes whatsoever. It would have been so easy for him to say “Gary hasn’t reviewed this yet” or “neither of us have watched the video” or any instructions whatsoever. By saying nothing, we submit that it was perfectly reasonable for our Client to assume that “*Scott and Gary [had] adjust[ed] and amend[ed] the letter to their liking.*”

- In the absence of any further correspondence from either of the Complainants, our Client assumed that both had taken the time to see the video before the amendments were made and that the amendments to the letter were from both of them. Since they sent the revised letter back to our Client, he also assumed that they intended for him/World Sailing to send the letter on their behalf. A copy of this email is attached as **Annex 5**.
- On 1 March 2020, as our Client had received no further comments and or amendments from the Board, our Client forwarded Mr Perry’s email and updated letter to the World Sailing Business Operations Manager – Rowena Farrugia - and requested that she send it to Tom Ehman. A copy of this email is attached as **Annex 6**.
- On 2 March 2020, Ms Farrugia replied confirming that she would send the letter – which she duly did (the “**Letter**”). A copy of this email is attached as **Annex 7**.
- On 3 March 2020 at 11:53AM, Mr Perry wrote an email to the Board stating, *inter alia*, that the Letter had been sent without his, or Mr Jobson’s approval. Mr Perry stated that he had “*now listened*” to the Video (apparently a few days after amending the draft letter) and it was apparent to him that Tom Ehman had been referring to a different Scott (Scott Macleod - a marketing manager for the New York Yacht Club’s America’s Cup challenger, “American Magic”). A copy of this email is attached as **Annex 8**.
- On 3 March 2020 at 1:16PM, our Client replied to Mr Perry’s email stating *inter alia* that he had initially requested the Complainants to send the letter themselves. A copy of this email is attached as **Annex 9**. In this email our Client also stated that:

“For you to ask me or WS to send the letter and then not even having listen to the issued when forwarded to you before the board meeting must be your own responsibility.

I have not been informed about any information for the letter not to be send. I your letter it says “Amended draft letter to Tom Ehman”, - no more no less!

Scott, I am not following Sailing Illustrated, but was given the feed from well-meaning MNA`s for whom it was not apparent that the Scott mentioned was not a board member.”

- On 3 March 2020 at 1:50PM, Mr Perry replied reiterating that he had not authorised the sending of the Letter. A copy of this email is attached as **Annex 10**.
- On 3 March 2020 at 2:03PM, our Client replied to Mr Perry’s email reiterating that the latter had sent our Client an amended letter (stating “we” instead of “I” like in our Client’s draft letter), without any instruction for it to not be sent (indeed with no instructions whatsoever). Given the above, our Client could not have known that Mr

Perry had amended the letter without actually having seen the Video. A copy of this email is attached as **Annex 11**.

- On 3 March 2020 at 6:28PM, Mr Jobson sent an email to the Board attaching a letter. In this letter, Mr Jobson stated *inter alia* that he had not seen or approved the draft letter before it was sent to Mr Ehman. Mr Jobson stated that this was “*a serious breach of trust.*” A copy of this email (and letter) is attached as **Annex 12**.
- On 3 March 2020 at 6:48PM, our Client replied to Mr Jobson’s email reiterating his previous comments to the Board, which was that he would not have requested the letter to be sent if he knew that the Complainants did not want the letter sent. A copy of this email is attached as **Annex 13**.
- On 7 March 2020, Mr Jobson sent an email to our Client once again reiterating that he had not given permission to send the letter to Mr Ehman. Mr Jobson requested that our Client issue an apology to him, Mr Perry and Mr Ehman. A copy of this email is attached as **Annex 14**.
- On 7 March 2020 at 9:43AM, our Client sent an email to the Board summarising the confusion and back and forth that had gone on regarding the issue. Our Client provided copies of the relevant correspondence to the Board and stated that he simply did what the Board had agreed and did it to protect the Board and World Sailing. A copy of this email is attached as **Annex 15**.
- On 22 April 2020, the Complainants filed the Complaint with the World Sailing Ethics Commission.

B Summary of the Complaint

In a nutshell, the Complaint states that directing the Letter be sent to Tom Ehman without the Complainants’ approval was an unauthorised use of World Sailing’s letterhead and their respective electronic signatures.

The Complainants submit that this amounts to (i) unethical behaviour by our Client in carrying out his duties as a World Sailing office holder; and (ii) a serious breach of the World Sailing Code of Ethics (“**Code**”), in particular Article 1.3(e) of the Code.

C. Response to the Complaint

In summary, our Client considers these events to be an unfortunate misunderstanding which has been blown significantly out of proportion.

As has been set out in the background facts above, an issue arose with the Video which the Board – including the Complainants - agreed needed to be responded to. The Board discussed the matter on the evening of 28 February 2020 and resolved that a letter should be sent by the Complainants. Both of them stated that they would review the Video before any letter was sent. The intention of the Board in taking this course of action was to protect the reputation of World Sailing.

As you would be aware, there was no CEO in place at World Sailing at that time. He or she would normally have drafted the Letter and arranged for it to be sent out. With no CEO in post, our Client (as President of World Sailing) prepared the draft and sent it to the Board, including the Complainants. This was done on the evening of 28 February 2020. The covering email made it clear that the Complainants should amend this draft to their “liking”.

During the course of the second day of the Board Meeting on 29 February 2020, Mr Perry sent an amended draft to both Mr Jobson and our Client.

Given that both the Complainants had previously stated that they would review the Video before any letter was sent, our Client assumed that the amended letter (again, which stated “we” to include both Complainants instead of “I”) was from both Mr Scott and Mr Jobson. There were no instructions in the email from Mr Perry, and Mr Jobson did not reply to that email or provide any further comments. Indeed, there was nothing in Mr Perry’s email to indicate that Mr Jobson had not yet approved the draft letter, or that Mr Perry himself had not actually viewed the Video before sending our Client his amends. All of the above only served to confirm our Client’s assumption that the amended letter from Mr Perry was approved by both Complainants.

Our Client submits that he was merely acting as the go-between, as the CEO would have. There was no intention to cause any harm to either of the Complainants, nor to the reputation of World Sailing. Indeed, the entire purpose of the Letter was to help protect the reputation of World Sailing and its entire Board.

Most importantly, we cannot understand how the actions of our Client in any way could amount to a violation of the Code.

Article 1.3(e) of the Code, which was the only Article cited in the Complaint, states:

“World Sailing Parties shall use due care and diligence in performing any function for World Sailing. They must not act in a manner that will or is likely to tarnish the reputation of World Sailing.”

We note that the other provisions of Article 1.3 of the Code (under the heading “Integrity”) all relate to the acceptance of bribes, conflicts of interest and the like – in other words issues which are intended to be covered by a sports governing body’s code of ethics.

It is plainly against the purpose of the Code and entirely nonsensical for simple misunderstandings and/or honest mistakes such as what has occurred here to be categorized as ethics violations or a failure to “*use due care and diligence*.” If not, it would set an absurd and dangerous precedent for everyone involved in World Sailing in which any mistake or misunderstanding – no matter how unintentional or inconsequential – could be deemed as ethics violations under the Code. That would not only be an unnecessary waste of resources for all involved, but also plainly against the best interests of World Sailing.

We also note that the Complainants have failed to submit any evidence whatsoever how our Client acted “*in a manner that will or is likely to tarnish the reputation of World Sailing*.” On that basis alone, the Complaint should be dismissed.

Moreover, it is important to note that the Complainants’ own actions contributed the misunderstanding which occurred here:

- After having confirmed that he would review the Video before the letter was sent, Mr Perry for some reason decided to amend our Client’s draft letter before viewing the Video. Mr Perry could have stated in the email to our Client (Annex 5) that his amends were only preliminary amends and he still needed to view the Video. Better still, he could have simply not sent an amended letter to our Client before viewing the Video.
- Mr Perry’s amendments changed the draft so it was a joint response with Mr Jobson.
- Mr Perry could easily have clarified that the letter was subject to Mr Jobson’s amends.

- Despite our Client's suggestion that Mr Perry (and Mr Jobson) send the letters themselves to Mr Ehman, Mr Perry sent an amended draft back to our Client which gave our Client the impression that he wanted our Client to send the letter instead.
- Mr Jobson could have replied to the email from Mr Perry stating that he would also review the draft letter and provide his amends (if any) in due course.

The Complainants chose not to do any of the above, and their failure to do so clearly contributed to the misunderstanding which led to the Letter being sent.

D. Summary

For all the reasons set out above, this was a simple misunderstanding that has been blown significantly out of proportion by the Complainants.

Our Client is surprised and disappointed that the Complainants have decided to go down the road of filing the Complaint with the Ethics Commission. However, he trusts that you will recognise that this was nothing more than an honest mistake and that no further action is required.

We thank you for your assistance and remain at your disposal for any further information.

Yours faithfully,

Mills & Reeve LLP

Encl.

- Annex 1:** Email from Kim Andersen to the Board, dated 26 February 2020
- Annex 2:** Email from Gary Jobson to the Board, dated 26 February 2020
- Annex 3:** Email from Kim Andersen to the Board, dated 27 February 2020
- Annex 4:** Email from Kim Andersen to the Board, dated 29 February 2020
- Annex 5:** Email from Scott Perry to Kim Andersen, dated 29 February 2020
- Annex 6:** Email from Kim Andersen to Rowena Farrugia, dated 1 March 2020
- Annex 7:** Email from Rowena Farrugia to Kim Andersen, dated 2 March 2020
- Annex 8:** Email from Scott Perry to the Board, dated 3 March 2020
- Annex 9:** Email from Kim Andersen to the Board, dated 3 March 2020
- Annex 10:** Email from Scott Perry to the Board, dated 3 March 2020
- Annex 11:** Email from Kim Andersen to the Board, dated 3 March 2020
- Annex 12:** Email (and an attached letter) from Gary Jobson to the Board, dated 3 March 2020
- Annex 13:** Email from Kim Andersen to the Board, dated 3 March 2020

Annex 14: Email from Gary Jobson to Kim Andersen, dated 7 March 2020

Annex 15: Email from Kim Andersen to the Board, dated 7 March 2020.