

BEFORE THE INDEPENDENT PANEL

IN THE MATTER OF

WORLD SAILING

and

(1) MR DIETER NEUPERT

(2) MR. SER MIANG NG

DECISION OF
THE INDEPENDENT PANEL FOLLOWING THE HEARING
ON 12 AUGUST 2022

Background

1. These are the written reasons for a decision made by an Independent Panel which sat on 12 August 2022. There was a further hearing on 7 September 2022 to determine sanction after representations from the Parties had been submitted.
2. The Independent Panel members were Mr Gareth Farrelly, Chairman, Mr John Shea and Ms Laura McCallum.
3. On 25 September 2020, the former World Sailing (WS) President, Mr Kim Andersen, made complaints against Mr Dieter Neupert and Mr Ser Miang Ng, relating to their conduct whilst they were members of the World Sailing Ethics Commission. It was alleged that their conduct was in breach of World Sailing Regulation 35.2.4.
4. Christopher Stoner KC was appointed as Disciplinary Investigating Officer (“DIO”) by the Judicial Board to investigate the allegations of misconduct. His decision dated 22 June 2021 concluded that, on his understanding of the rules at the time, neither Dr Neupert or Mr Ser Miang were ‘Participants’ and therefore no further action against them was appropriate.
5. Pursuant to Regulation 35.5.15, on 27 July 2021 Mr Anderson requested that a second DIO be appointed to investigate the complaint. Ms Lydia Banerjee was appointed by the Judicial Board. Following her appointment, the WS Constitution Committee issued an interpretation on 3 September 2022 that a person remains subject to the jurisdiction of World Sailing concerning conduct that occurred whilst they were a participant.
6. On 9 February 2022, Ms Banerjee issued her report which found that Mr Neupert and Mr Ser Miang should be charged with breaches of Regulation 35.2.4. On 11 February 2022, Mr Banerjee provided a Notice of Charges, pursuant to which she determined that the charges against them were sufficiently linked that it was appropriate to consolidate the proceedings in accordance with Regulation 35.6.18.

Charges, Preliminary Issues and Reply

7. The following charges were placed before Mr Neupert: -

Charge 1

1. Failure to identify and address any apparent conflicts of interest with respect to Case 2, Case 3 and Case 4 from the point at which Case 4 was raised. It was said that his conduct amounted to misconduct, inter alia:
 - 1.1 Regulation 35.2.4(b) – failure to act with utmost integrity, honesty and responsibility; and
 - 1.2 Regulation 35.2.4(e) – acting in a manner that is likely to compromise the impartiality of the Ethics Commission

Charge 2

2. Making potentially defamatory remarks against Mr Anderson in front of the Ethics Commission and members of the World Sailing Executive in respect of correspondence on 2 October 2020. It was said that his conduct amounted to misconduct, inter alia:

- 2.1 Regulation 35.2.4(b) – failure to act with utmost integrity, honesty and responsibility;
- 2.2 Regulation 35.2.4(d) – failure to treat others with respect; and
- 2.3 Regulation 35.2.4(e) – acting in a manner that is likely to compromise the impartiality of the Ethics Commission.

8. The following charge was placed before Mr Ser Niang: -

- 3. Failure to identify and address any apparent conflicts of interest with respect to Case 2, Case 3 and Case 4 from the point at which Case 4 was raised. It was said that his conduct amounted to misconduct under, inter alia:

- 3.1 Regulation 35.2.4(b) – failure to act with utmost integrity, honesty and responsibility; and
- 3.2 Regulation 35.2.4(e) – acting in a manner that is likely to compromise the impartiality of the Ethics Commission.

9. For completeness, Mr Ser Miang failed to engage with both DIOs whilst they were conducting their investigations and there was no means by which he could be compelled to co-operate. However, in relation to the charge brought against him, it was claimed by Mr Neupert that he was authorised to act on Mr Ser Miang's behalf. The Respondents denied all charges brought against them.

10. The applicable standard of proof shall be the comfortable satisfaction of the Independent Panel, bearing in mind the seriousness of the alleged misconduct.

Preliminary Issue

11. Mr Neupert sought to challenge the jurisdiction of WS claiming that the interpretation of the Constitution Committee as to what constituted a 'Participant' was incorrect. He sought to rely on the decision of Mr Stoner KC who found that, as Mr Neupert was no longer a 'Participant' for the purposes of the WS Regulations, he concluded that no further action was warranted.

12. In preparing her report, Ms Banerjee considered herself to be bound by the interpretation of the Constitution Committee which states that the definition of 'Participant' in the WS Regulations includes former Participants.

13. It was submitted that both Mr Neupert and Mr Ser Niang were Participants at the time of the alleged conduct and at the time that the complaint was made on 9 October 2020. The interpretation of the Constitution Committee in confirming that action could be taken against the former Participants in relation to conduct committed as Participants was one which was logical and equitable. It was accepted that the written documents being interpreted could have been clearer on this point.

14. The power of the Constitution Committee to interpret the WS Constitution and Regulations can be found in Regulation 6.2.2(i) which states: -

"The Constitution Committee shall be the sole body responsible for interpreting the Constitution and Regulations of World Sailing and ensure that World Sailing operates consistently within its Constitution and Regulations".

15. Regulation 16.1 provides that: -

“The interpretation of the World Sailing Constitution, including any ancillary documents, and Regulations shall be the sole responsibility of the Constitution Committee”.

16. Regulation 35.2.1 states: -

35.2.1 In this Code, a “Participant” means

- a. Any competitor, boat owner, support person; and*
- b. Any World Sailing Council, committee or commission member, working party member, any alternates appointed, World Sailing Member (including any representatives sent by a Member to attend World Sailing Events, meetings or other official functions), World Sailing Officer, World Sailing Race Official or World Sailing Representative, or any person, official or body subject to the World Sailing Constitution or World Sailing Regulations.*

17. The Constitution Committee was asked a number of questions, the first being at what point someone ceased to be a “Participant” for the purposes of Regulation 35.2.1.b?

18. The response was that a person who is considered a “Participant” as defined in the Regulations will cease to be considered as such from the time they no longer hold any of the listed offices or appointments and/or are no longer subject to the WS Constitution or Regulations – whichever is the latter in time.

19. However, it was stated that having agreed to comply with the WS Constitution/Regulations, a person remained subject to the jurisdiction of WS concerning conduct that occurred whilst they were a Participant. Therefore, they continue to be subject to the Regulations and remain responsible for their conduct whilst they held any of the offices or appointments under those Regulations.

20. Accordingly, action can be taken concerning such persons for conduct whilst they held such offices or appointments.

21. The Constitution Committee was then asked if the subject of a complaint under Regulation 35 ceased to be a “Participant” during the investigation, what options remained open to the DIO under Regulation 35.6.13?

22. Regulation 35.6.13 states: -

35.6.13 – Following the review, the Disciplinary Investigating Officer shall in his absolute discretion (against which there is no appeal):

- a. Take no further action; or*
- b. Issue a warning to any Participant in the report, and thereafter take no further action; or*
- c. Charge any Participant with any act(s) of Misconduct which, in the opinion of the Disciplinary Investigating Officer, may warrant disciplinary action with the jurisdiction of World Sailing.*

23. The Constitution Committee’s position was that the fact that they are no longer a Participant is a factor to which the DIO can take account when exercising their discretion, but the weight to be given to this factor is wholly a matter for the DIO.

24. Regulation 36.2 states: -

36.2 - World Sailing and each of its members, any candidate for election to a World Sailing office or MNA office, members of its Council and its Committees, Commissions and working parties, World Sailing Race Officials, or any person, official or body subject to the World Sailing Regulations, all other World Sailing Representatives, Organising Committees of any World Sailing events and World Sailing Classes (“Parties”) shall be bound by, respect and comply with the World Sailing Code of Ethics.

25. With regard to the question at what point does someone cease to be considered a “Party” for the purposes of Regulation 36, the response was the same as the first question.

26. Regulation 36.10 states: -

36.10 – Following the investigation, the Ethics Officer shall:

- a. Take no further action; or*
- b. Issue a warning to any Party in the report, and thereafter take no further action; or charge any Party with a breach of the Code.*

27. The final question for the Constitution Committee was if the subject of a complaint under Regulation 36 ceased to be a “Party” during the investigation, what options remained open to the Ethic Officer under Regulation 36.10?

28. As with the question concerning Participants, the Constitution Committee’s position was that the fact that they are no longer a Participant is a factor to which the DIO can take account when exercising their discretion, but the weight to be given to this factor is wholly a matter for the DIO.

29. The Independent Panel has had an opportunity to meet and determine the preliminary issue on the jurisdictional challenge raised by the Respondents. The Panel had full regard to all the matters raised in the documentation provided by both parties in advance of this hearing which was held by video conference on 27 April 2022.

30. For completeness, Case 2 related to a complaint brought by Scott Perry and Gary Jobson against Mr Anderson. Case 3 was also a complaint brought by Gyorgy Wossala against Mr Anderson and Case 4 related to Mr Anderson’s complaint against both Respondents. It is not necessary for the Independent Panel to rehearse the substance of Cases 2 and 3.

31. In determining at what time someone ceased to be considered a ‘Participant’ for the purposes of Regulation 35.2.1.b, the Independent Panel noted that the Constitution Committee determined that “a person who is considered a “Participant” as defined in Regulation 35.2.1.b will cease to be considered as such from the time they no longer hold any of the listed offices or appointments and/or are no longer subject to the World Sailing Constitution or Regulations – whichever is the latter in time.

32. However, having agreed to comply with the World Sailing Constitution/Regulations, a person remains subject to the jurisdiction of WS concerning conduct that occurred whilst they were a Participant. Therefore, they continue to be subject to the Regulations and remain responsible for their conduct whilst they held any of the offices or appointments under these Regulations. Accordingly, action can be taken concerning such persons for conduct whilst they held such offices or appointments”.

33. The Independent Panel further considered the interpretation of the relevant Regulations provided by the Constitution Committee. It is noted that the power of the Constitution Committee to interpret the WS Constitution and Regulations can be found in Regulation 6.2.3 (i). It states that “the Constitution Committee shall be the sole body responsible for interpreting the Constitution and Regulations of World Sailing and ensure that World Sailing operates consistently within its Constitution and Regulations”. Furthermore, Regulation 16.1 states that “The interpretation of the WS Constitution, including any ancillary documents, and Regulations shall be the sole responsibility of the Constitution”.

34. The Independent Panel agreed that this had to be the case. Any other interpretation would be absurd. Whilst considering the determination of the first investigation, the Independent Panel had the benefit of the interpretation provided by the Constitution Committee and unanimously agreed with this interpretation of the Regulations. It is not disputed that both Respondents no longer hold positions within WS, however, they remain bound by those Regulations for actions alleged whilst in those roles.

35. Having carefully considered all the relevant factors, and having carefully considered the submissions of the parties, it was unanimously agreed that the Respondents are bound by the Constitution Committee interpretation of ‘Participant’, as defined in Regulation 35.2.1(b) and the WS Regulations. It follows that the Respondents were Participants at the time of the alleged misconduct, and when the complaint was made on 25 September 2020. Therefore, the Respondents failed in their jurisdictional challenge.

Charges

36. The following is a summary of the principal submissions provided to the Independent Panel. It does not purport to contain reference to all the points made, however the absence of a point, or submission, in these reasons should not imply that the Independent Panel did not take such point, or submission, into consideration when the members determined the matter. For the avoidance of doubt, the Independent Panel has carefully considered all written evidence and reports in respect of this case.

37. The first charge related to a failure by both Respondents to identify and address any apparent conflict of interest with regard to the ongoing cases involving Mr Anderson. It was Mr Banerjee’s position that the question of whether a conflict of interest existed was whether there was an appearance of apparent (or actual) bias. The test for an appearance of bias is ‘whether the fair-minded and informed observer’, having considered the facts, would conclude that there was a real possibility that both Respondents were biased.

38. Having considered the chronology, it was submitted that the conclusion that there was a conflict of interest was established at the point at which the complaint was filed against the Respondents. From this point, it was averred that both Respondents should have stepped aside from any further involvement in the cases against Mr Andersen. Even if it was only based on the fact of the Case 4 complaint that would have been sufficient to generate a potential or apparent conflict.

39. It was further submitted that when the actual emails sent by Mr Neupert were considered there was a good argument that there was evidence of actual bias. The correspondence was intemperate, included serious allegations such as forgery, which were not supported by the underlying materials and demonstrated a partisanship which had no place in the running of the Ethics Commission.

40. Mr Neupert did not step aside and led the process by responding to the applications in Case 2 and Case 3. It was a position that was supported by the majority of the rest of the Ethics Commission, but it was submitted that he should have had no part in it.

41. With regard to Mr Ser Miang, it was submitted that rather than step aside he remained involved in that, at the very least, he voted in the decision on the application that was issued on 8 October 2020. This involvement rendered the decision null and void.

42. The second charge against Mr Neupert related to comments made in correspondence on 2 October 2020. Mr Neupert wrote to other members of the Ethics Commission, the WS CEO, the Director of Legal and Governance and the Ethics Officer in Case 3, that Case 2 related to the “*forgery of a letter*”. Ms Banerjee read the opinion of the Ethics Officer in Case 3 and stated that whilst there were a few minor references to a name having been ‘*forged*’ it was not accurate to describe this case as being about a ‘*forgery*’.

43. It was accepted by both DIOs that English was not Mr Neupert’s first language but having considerable evidence of his written correspondence, it was submitted that this was not an issue.

44. It was also noted that when Mr Anderson’s lawyers challenged the description in their letter of 5 October 2020 there was no apology or retraction by Mr Neupert which would have been the obvious course of action if the term had been used by accident or due to a linguistic misunderstanding.

45. In relation to Charge 1, it was Mr Neupert’s position that Mr Niels Kiaer, the Ethics Officer appointed in Case 4 had decided on 5 May 2022 that neither Mr Neupert or Mr Ser Miang were conflicted.

46. It was further claimed that if they were not conflicted in Case 2, they were certainly not conflicted in Case 3. This case had just started with Ethics Officer Laurence Burger, and this appointment had been welcomed by all the parties, especially Mr Anderson.

47. It was also submitted that the decision of Niels Kiaer determined that any allegation of a breach of the Code of Ethics would be disqualified under the principle of *Ne bis in idem*.

48. Mr Neupert claimed that Mr Anderson may be sued for misleading in the Court of Appeal by asserting that he and Ser Miang, Josep Pla were conflicted, and with this false allegation he had been able to overturn the initial decision of the Ethics Commission.

49. With regard to Charge 2, Mr Neupert claimed that the use of the expression ‘*forgery of a letter*’ was him looking for the correct English expression for a misdemeanour in the case where a person uses the signature of another person. This related to Case 2. It was submitted that the expression by Collins Dictionary were “*Forgery*” or “*Falsification*” and Mr Neupert chose the first one.

50. Mr Neupert stated that there was no disrespect meant and the email did not pass beyond the Ethics Commission and the WS CEO who was in the look from the start. In fact, Mr Anderson had been sanctioned for this misdemeanour with a warning from the Ethics Officer, Mr Pla. It was not possible to claim that a conflict existed as sailors worldwide had claimed that particular sanction to be mild.

51. Mr Neupert claimed that the Independent Panel should not turn the culprit into the victim by sanctioning the Chairman of the Ethics Committee who was undertaking his role pro bono.

52. Finally, it was claimed that Mr Anderson had made claims to the world wide press accusing Mr Neupert of featuring in the Panama Papers and being an indirect supporter of Vladimir Putin, having clear conflicts of interest and seeking to damage his reputation.

53. WS's response to the Respondents' submissions was that Niels Kiaer and Ms Banerjee were considering different questions. Ms Banerjee was tasked with considering whether, in deciding in October 2020 to remain involved in the handling of Cases 2, 3 and 4 there was a failure to recognise an apparent (or actual) conflict on the part of the Respondents. Niels Kiaer was tasked with considering whether there was an actual conflict of interest with Mr Pla at the time of his appointment as Ethic Officer on Case 2 in April 2020 such that the Respondents were in breach of their obligations. Ms Banerjee was considering a potential conflict where in theory the defendant in that complaint was being challenged about the handling of complaints and then electing to continue to oversee the handling of the complaints in dispute, was not considered by Niels Kiaer.

54. Furthermore, the evidence in front of both Niels Kiaer and Ms Banerjee was different and related to different questions, this was not a situation where there were inconsistent findings based on the same evidence.

55. It was submitted that there was no reason why the answers subsequently reached by Niels Kiaer should bind or limit the answers reached by Ms Banerjee. The suggestion of a hierarchy or precedent leading to 'ne bis in idem' was not applicable in this case.

56. Ms Banerjee claimed that even if she was wrong and Niels Kiaer's findings were in some way relevant, apparent bias can arise even when it is ultimately shown that there was no actual bias.

57. It was also claimed that any challenge to the Court of Appeal was not relevant to the allegations in her report.

58. In dealing with the alleged lack of respect regarding the potentially defamatory comments, Ms Banerjee noted that she did not have the benefit of Mr Neupert's response when preparing her initial report. However, her position remained the same, Mr Neupert offered no apology or retraction at the time. This would have been the obvious course of action in the event that the term used was an accident or linguistic understanding.

59. As to the remaining submissions proffered by Mr Neupert, Ms Banerjee stated that she had worked from the facts on the allegations presented. Mr Neupert's complaints that an earlier sanction in a contested process was viewed as a light sanction by others appears to be recommending a 'court of public opinion' approach which would not accord with the rules and procedures of WS and nor does it relate to the matters under assessment.

60. Mr Neupert's response that sanctioning the Chairman of the Ethics Commission for 'doing his job pro bono' is turning the 'culprit into a victim' appeared to suggest that a Chair of a committee or commission should not be open to challenge when the way in which they perform their role (whether pro bono or otherwise) was contrary to the rules of the organisation.

61. As to the media claims, it was Ms Banerjee's position that there was no evidence to support Mr Neupert's claims. In fact, the article concluded that Mr Anderson had been approached for comment which implied that he was not the source.

62. It was accepted that this was a time when allegations were being made by both parties. It was not accepted that this in some way excused the conduct of Mr Neupert who was acting in a serious role and making a serious allegation.

63. It was submitted that if this article or alleged comments in the media had given rise to a legitimate grievance, Mr Neupert had options open to him to make a complaint. It was evident he had failed to do so, and it was not now possible to belatedly use these proceedings as a means to do so.

64. Finally, with regard to the definition of ‘forgery’, context and language used, Ms Banerjee did not accept the account of Mr Neupert. In his original response, he had said that the use of the word was not copied from press commentary but rather the result of careful consideration of the dictionary meaning of the word he sought to use. He persisted with the use of this phrase despite knowing this had caused upset. His position had then altered claiming that he relied on dictionary definitions as English was not his first language.

Decision

65. This case was by no means straightforward. It is evident that this matter was highly politicised within WS and related to governance issues in relation to the operation and functioning of the Ethics Commission. Ms Banerjee noted that the allegations made against Mr Anderson at the time, which were not substantiated, but which caused damage to his reputation, and for which Mr Anderson complained, with good reason, demonstrated that there had been a campaign to influence the election and cause harm to his reputation.

66. The Independent Panel have had the benefit of the reports prepared by both DIOs. The Independent Panel also have had the benefit of the interpretation of ‘Participant’ from the Constitution Committee, an issue that was raised by Mr Stoner KC in the preparation of his report, but not available to him at the time of his investigation. As to the substantive element of his report, it was noted that his conclusion was that further action would be warranted in relation to the complaints that resulted in the charges being brought by WS. This was confirmed by Ms Banerjee’s comprehensive report.

67. It is difficult to reconcile how they could have arrived at any other decision. Both Respondents occupied positions of authority within the Ethics Commission of WS. Mr Neupert was the Chair of the Commission. They are both extremely experienced sports administrators. For completeness, it is noted that Mr Ser Miang resigned his position on 4 December 2020.

68. With regard to the failure to identify and address any apparent conflicts of interest in the respective cases, in Case 2, Mr Anderson challenged the appointment of the Ethics Officer, Josep Pla on 4 May 2020. This was due to concerns over his independence and impartiality. Mr Neupert dismissed these concerns and the investigation proceeded. As a consequence of this, a further member of the Ethics Commission resigned stating his resignation was “*directly linked to the current choice of [Ethics Office]. I was in favour of an Ethics Office 100% not politically involved and this was, for me, obviously not the case*”. This resignation left the Ethics Commission without the correct quorum to operate formally. However, Mr Neupert continued to take decisions, in fact appointing himself to consider Case 3 alongside Mr Ser Niang and another Commission member. Again, this case related to a further complaint against Mr Anderson regarding a potential conflict of interest.

69. On 25 September 2020, Mr Anderson made a complaint against both Respondents, Case 4. It is evident that Mr Neupert retained control over all correspondence and continued to liaise with

Mr Anderson's representatives as well as the other members of the Ethics Commission, inter alia, despite the fact that a complaint had been made directly against him and Mr Ser Miang, citing a potential conflict of interest in relation to the other two cases. This called into question the integrity of the process, and potentially compromised, not only the investigations themselves, but also the Ethics Commission. It is telling that Mr Ser Miang also remained involved and voted on the decision taken by the Ethics Commission on 8 October 2020.

70. The Independent Panel agreed that the test for an appearance of bias is 'whether the fair-minded and informed observer', was satisfied to the requisite standard. The Respondents failed to act with the utmost integrity and responsibility whilst executing their role. At the point that concerns were made in relation to the appointment of Mr Pla in Case 2, and notably the reasons for these concerns, the Respondents should have recused themselves from any part of the investigation. This was before the complaint was made against both Respondents. As a lawyer, Mr Neupert should have been aware of a likely conflict of interest in relation to Cases 2 and 3, or at a minimum a perceived conflict of interest. He was aware of the political environment within WS at this time. There was a heavily contested election taking place. The Ethics Commission were also under increased scrutiny given a number of resignations. However, this does not appear to have been addressed by Mr Neupert. Furthermore, at the point the complaint was made against the Respondents, they retained their involvement and were directly involved in applications and directions as to how these cases were to be dealt with, or in Mr Ser Miang's case voting as to a particular course of action. By doing so, the Independent Panel agreed with Ms Banerjee that the Respondents acted in a manner likely to compromise the impartiality of the Ethics Commission. There was no finding that the Respondents acted dishonestly.

71. With regard to the second charge brought against Mr Neupert, the Independent Panel agreed that Mr Neupert's emails contained language that was misleading and had serious connotations. the language used in Mr Neupert's emails amounted to misconduct under Regulation 35.2.4. Again, with the benefit of reviewing all of the correspondence in relation to this case, it is evident that this language/remarks were used to undermine Mr Anderson's complaint. They were factually incorrect, leading and were likely to influence those in receipt of this correspondence, especially if they lacked a firm understanding of Case 2. As Ms Banerjee stated, this was "intemperate, included serious allegations such as forgery, which were not supported by the underlying materials and demonstrated a partisanship which had no place in the running of the Ethics Commission". Mr Neupert's tone was present in further correspondence on 24 October where he stated "*Breaking News – Unbelievable – a friend of the Ethics Commission becoming President!!! Have a pleasant weekend. Dieter*".

72. In fact, Mr Neupert appeared to apologise for his use of language in an email to Mr Anderson's legal representatives on 5 October 2020 stating "*Of course I am always trying to speak plain English – so forgive me if I was of the opinion that sending a letter in the intention of letting the recipient assume that the two signatures were genuine might be called forgery (like in Roman Law Countries)*". This appeared to be a barbed response, a veiled acknowledgement of the concerns raised, with little recognition of the seriousness of the comments made, and the likely consequences of such comment.

73. This is not conduct befitting of the Chairman of the Ethics Commission. The Independent Panel deemed it to be a failure to act with the utmost integrity and responsibility, a failure to treat others with respect, and given the audience of the correspondence, acting in a manner that was likely to further compromise the impartiality of the Ethics Commission. The Chairman of the Ethics Commission is required to be beyond reproach. In this case, Mr Neupert fell below this standard. The Independent Panel are not required to investigate why this was the case. There was no finding of dishonesty.

74. Finally, it was not accepted that Niels Kiaer's report determined that Ms Banerjee's report would be disqualified under the principle of *Ne bis in idem*. It was agreed that despite some overlap with her report she was appointed to consider different questions. This included, if when remaining involved in the handling of Cases 2, 3 and 4 there was a failure by the Respondents to recognise an apparent (or actual) conflict on the part. Niels Kiaer's report was tasked with considering whether there was an actual conflict of interest with Mr Pla at the time of his appointment as Ethics Officer on Case 2 in April 2020 such that the Respondents were in breach of their obligations. This was clearly the case.

75. For the reasons given, the Independent Panel are satisfied to their comfortable satisfaction that the Charges are found proven.

Sanction

76. Paragraph 9.5 of the Judicial Board Rules of Procedure provides as follows:

"If a Charge is proven, the Participants shall be invited to address the Panel as to any matter relevant to its consideration of sanction, which shall include the disciplinary record of the Participant and any mitigation raised. The Panel shall then announce its decision as to any sanction or other order to be imposed as soon as is reasonably practicable and in such manner as it deems appropriate."

77. Both Mr Neupert and Mr Ser Niang were invited to address the Panel if they so wished. It is noted that this invitation was also available to Mr Ser Miang. Mr Neupert submitted detailed representations, the contents of which were noted.

78. It was noted that in Ms Banerjee's response to the submissions of Mr Neupert, she recommended a sanction that she believed to be appropriate.

Conclusion

79. Therefore, the Independent Panel, having carefully considered all the evidence and representations have imposed the following sanction on Mr Dieter Neupert and Mr Ser Miang Ng:

- (i) A warning; and
- (ii) A Fine of €1,000 Euros.

80. There is no order as to costs.

81. Subject to Regulation 35.6.24, all decisions of the Independent Panel shall be final and binding on the Participants and on any party claiming through or under them and the Participants agree, by submitting to the proceedings held under these Rules, irrevocably to waive their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to any statutory or other rights.

Mr Gareth Farrelly, Chairman
Mr John Shea
Ms Laura McCallum
29 November 2022