

Mr David Graham
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Dear Mr Graham,

RE: Ethics Complaint against Mr Dieter Neupert and Mr Ser Miang Ng
Our Client: Mr Kim Andersen

We write to you on behalf of our Client, Mr Kim Andersen, President of World Sailing (“**WS**”).

Our Client wishes to file a complaint against Dieter Neupert (Acting Chairperson of the WS Ethics Commission), and Ser Miang Ng (Member of the WS Ethics Commission) (“**Complaint**”). For the reasons set out below, we believe that the conduct of Mr Neupert and Mr Miang (collectively, the “**Individuals**”) amount to gross violations of the WS Code of Ethics (“**Ethics Code**”).

We kindly request that you refer this Complaint to an Ethics Officer (“**EO**”) for further investigation. We note that pursuant to Article 36.4 of the WS Regulations (“**Regulations**”), it is the CEO who shall refer the matter to an EO. It is evident from the below that much of the legal and political fallout that has occurred over the last few months has been a direct result of an EO being appointed in Case 2 who was clearly not independent or impartial. Accordingly, we insist that a truly independent EO is appointed from outside WS (for example through Sports Resolutions UK) so that this matter can be dealt with free of any conflicts of interest or political battles.

At the outset, we wish to state that while this letter sets out the grounds on which we believe an investigation in respect of the Individuals should be initiated, we reserve our right to make detailed submissions along with evidence, once the case has been assigned to an EO, in accordance with Article 36 of the Regulations.

Background to the Complaint

As you will be aware, over the last 15-18 months, our Client has been the subject of three spurious complaints brought by various individuals within WS, seemingly acting in concert, for alleged violations of the Ethics Code.

To provide a brief overview:

- The first of these cases was a complaint by Gyorgy Wossala and Zvi Ziblat. An independent EO was appointed through Sports Resolutions UK, who concluded that all of the allegations against our Client were entirely baseless and there was no further action to take (“**Case 1**”).
- The second case was a complaint by Scott Perry and Gary Jobson. The matter was simply not a matter which needed to be put before the Ethics Commission. Nevertheless, as explained below an EO was appointed who was plainly not independent or impartial. There were numerous procedural violations committed by Mr Neupert and the Ethics Commission during this matter, which culminated in a warning being issued against our Client (“**Case 2**”).
- The third case is another complaint by Mr Wossala, and is currently ongoing (“**Case 3**”).

Our Client’s position is that none of the above complaints had/have any legal basis whatsoever. Indeed the EO in Case 1 concluded as such for that case. However, the handling of these cases, particularly Case 2 and Case 3, has brought to light – ironically – the unethical manner in which the Individuals carry out their functions on the Ethics Commission. Moreover, it has made a mockery of the Regulations and has unfortunately allowed the Ethics Commission and Ethics Code to be abused for political purposes by certain individuals in the sailing community.

Particulars of the violations by each of the Individuals have been set out below.

Mr. Dieter Neupert

We set out below the various ways in which we consider that Mr Neupert has acted in violation of the Ethics Code:

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

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

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

We filed a formal objection to Mr Pla’s appointment and submitted a witness statement from Patrick Singleton (**Annex 1**), who confirmed that Mr Pla was openly assisting Gerardo Seeliger (a rival candidate to our Client for the World Sailing Presidency) in the upcoming October 2020 election.

In addition, it had been publicly reported that only a month prior to his appointment (i.e. on 22 March 2019) Mr Pla had sent a strongly worded letter to our Client complaining about what he considered to be “*a growing concern about the course WS is taking in its relationship with its Members*” (<https://www.sailingillustrated.com/single-post/2019/03/28/heres-the-letter-strongly-worded-letter-european-sailing-federation-president-josep-pla-a>)

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

All of the above should have given Mr Neupert cause to reconsider the decision to appoint Mr Pla. Instead, all of our Client's objections were simply dismissed by Mr Neupert with scant disregard – even going so far as to request our Client to “*refrain from further interference with the procedure*” (**Annex 2**).

Ultimately, Mr Pla's appointment as the EO in this matter directly resulted in the resignations of 3 members of the Ethics Commission (Nicolas Henard, Jo Keen and Úlfur Hròbjartson). All 3 resigned in protest of the inappropriate manner in which Mr Neupert had been running the Ethics Commission and Mr Henard specified that his resignation was a direct result of the political nature of Mr Pla's appointment as EO in Case 2 (**Annexes 3a and 3b**). We note that the 3 resignations also resulted in negative press for WS and left the Ethics Commission with insufficient members to carry out any further functions.

Violations of the Ethics Code:

Accordingly, we consider that Mr Neupert violated *inter alia* the following provisions of the Ethics Code:

- Article 1.3 (d) – failure to respect applicable rules concerning conflicts of interests (particularly, the WS Conflict of Interest Policy);
- Article 1.3 (e) – failure to exercise due care and diligence in performing functions for WS, tarnishing the reputation of WS;
- Article 1.9 (b) – failure to avoid any situation that could lead to a conflict of interests;
- Article 1.9 (c) – performance of functions where there is an existing or potential conflict of interest, without proper disclosure; and
- Article 1.9 (d) – failure to consider an existing or potential conflict of interest by referral to the Ethics Commission for determination.

2 *Continuing to act as Chairperson of an improperly constituted Ethics Commission*

Article 8.14.2 of the Regulations provide that the Ethics Commission must comprise of “*at least seven members*.”

On 20 May 2020, when Mr Henard submitted his resignation, the composition of the Ethics Commission was down to 6. In other words, it was, with effect from this date, improperly constituted pursuant to the Regulations.

Notwithstanding this, the Ethics Commission led by Mr Neupert continued to act and proceed with Case 2, culminating in it rendering a decision on the matter on 18 August 2020.

On 17 August 2020, we wrote to the Ethics Commission to request confirmation of how it could render any decisions at all given it was improperly constituted. Later that evening, Mr Neupert replied that “*... in my opinion the rights of any Complainants under the Code of Ethics must prevail over these formalities*” (**Annex 4**). It was remarkable that the Acting Chairman of the Ethics Commission of a sports world governing body could refer to mandatory procedural obligations under the Regulations as simply “*formalities*” that he could choose to ignore at his discretion. We understand that he is an attorney, so should understand that Regulations are not mere “*formalities*”.

We had no choice therefore but to write to the WS Constitution Committee to request clarification regarding the application of the Regulations. See **Annex 5** for our request for interpretation and **Annex 6** for the Constitution Committee's decision.

The Constitution Committee's decision effectively agreed with our Client's position in full, i.e. it concluded that the Ethics Commission was improperly constituted from the moment Mr Henard resigned and that the Ethics Commission was therefore unable to render any decisions from that point onwards. Accordingly, it is clear that the Ethics Commission led by Mr Neupert was acting *ultra vires* from 20 May 2020 onwards.¹

Mr Neupert's overall handling of issues before the Ethics Commission with regards to conflicts of interest, resignations by members and appointments of EO's has been staggering to witness. He has failed to afford our client due process and has continually acted in violation of the WS Regulations.

Violations of the Ethics Code:

Accordingly, we consider that Mr Neupert violated *inter alia* the following provision of the Ethics Code:

- Article 1.3 (e) – failure to exercise due care and diligence in performing functions for WS, tarnishing the reputation of WS.

3 Failure to respect the principle of confidentiality

On 18 August 2020, Mr Neupert sent an email to the WS Executive (copying in our Client) with the Ethics Commission's decision in Case 2. Mr Neupert requested that the decision be shared with the WS Council.

However, before the decision was shared with the Council or the WS Board, its contents were leaked to the press. Indeed, on 20 August 2020 an article was published which quoted large sections of the decision (<https://www.seilmagasinet.no/ethics-commission-gary-jobson-kim-andersen/advarsel-til-kim-andersen/701648>). As an aside, this article also disclosed confidential information about Case 3 - a case that was clearly confidential at that time as even today it remains ongoing.

Given that Case 2 was a dispute involving 3 WS Board members, it was entirely inappropriate that the decision was being publicly reported before it was even shared with the rest of the Board. Our Client considers that it was in all likelihood Mr Neupert who leaked the decision to the press. As the Acting Chairman of the Ethics Commission, Mr Neupert had a duty to ensure that due process of the Ethics Commission was respected. This also includes upholding the principle of confidentiality of proceedings, as set out in the Terms of Reference of the Ethics Commission (Regulation 8.14.8). He failed to do so.

It is also noteworthy that the journalist whom the information was leaked to was Mikkel Thommessen of 'seilmagasinet'. This was not the only time confidential correspondence involving our Client and Mr Neupert has been leaked to this particular journalist.

In the period 17 to 20 August 2020, our Tiran Gunawardena exchanged several emails with Mr Neupert regarding the various procedural violations which our Client considers were committed by Mr Neupert. Elements of this correspondence were then reported on by Mr

¹ For completeness, we appreciate that the Ethics Commission is now properly constituted again as of 18 September 2020 with the appointment of 5 new members. That does not change the fact that there has been less than 7 members in the period between 20 May 2020 and 18 September 2020, and the Ethics Commission was therefore improperly constituted during that entire period.

Thommessen. For example, on 17 August 2020 Mr Neupert asked us to clarify who was paying our legal fees – an entirely unprompted and inappropriate question for a Chairman of an Ethics Commission to ask. Curiously, only 6 days later on 23 August 2020 Mr Thommessen published another article (<https://www.seilmagasinet.no/dieter-neupert-ethics-commission-gary-jobson/word-sailings-omdomme-i-fare/701886>) which stated:

“In this process, Kim Andersen has received assistance from the law firm Mills & Reeve LLP in London. No one knows who pays the bill for their work for Andersen.”

Moreover, the abovementioned article also quotes what appears to be confidential correspondence between Mr Neupert and you (Mr Graham).

Lastly, it can hardly be considered a coincidence that Case 3, a complaint by Mr Wossala against our Client, is largely based on allegations made in articles published by Mr Thommessen. It is difficult not to conclude that Mr Neupert and Mr Thommessen, amongst others, are acting in concert against our Client.

Violations of the Ethics Code:

Accordingly, we consider that Mr Neupert violated *inter alia* the following provision of the Ethics Code:

- Article 1.7 – failure to respect the principle of confidentiality, with the malicious intent to damage the reputation of any person.

It is imperative that an EO is appointed, who can look into exactly how such correspondence ended up in the press.

4 *Perpetuated a falsehood that our client was trying to ‘get rid’ of the Ethics Commission*

Mr Neupert has, on numerous occasions, repeatedly an unfounded allegation that our Client was campaigning to “do away” with the Ethics Commission. It has been explained to Mr Neupert each time that this is unequivocally false. Nevertheless, Mr Neupert continued to make these false assertions.

Most recently, Mr Neupert repeated this false allegation in an email correspondence in which all the members of the (former) Ethics Commission and the WS Executive were copied into. He stated that “*your client thought that our Commission should be abolished anyway nobody cared*” (**Annex 7**), and when asked to substantiate why he made that comment Mr Neupert claimed that in a letter dated 31 March 2020 our Client stated that “*there is no need for a body called the Ethics Commission (contrary to the recommendations of the International Olympic Committee)*” (**Annex 7**).

However, in the letter Mr Neupert was referring to our Client actually stated “*There is no need for a **third** body called the “Ethics Commission” **which will have jurisdiction overlapping with these other bodies***” (**Annex 8**). Mr Neupert’s deliberate omission of the key words in bold were a gross oversight at best, or deliberately misleading at worst.

It goes without saying that misleading other members of the Ethics Commission by repeatedly making such a false assertion whilst there were two ongoing matters involving our Client before the Commission was greatly detrimental to our Client’s rights. It also confirmed Mr Neupert’s own lack of impartiality and a failure to take due care and diligence when acting as the Chair of the Ethics Commission.

Violations of the Ethics Code:

Accordingly, we consider that Mr Neupert violated *inter alia* the following provision of the Ethics Code:

- Article 1.3 (e) – failure to exercise due care and diligence in performing functions for WS, tarnishing the reputation of WS.

Mr. Ser Miang Ng

We set out below the ways in which we consider that Mr Miang has acted in violation of the Ethics Code:

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

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

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

As explained in Mr Singleton's witness statement (see **Annex 1**), it appears that Mr Miang has been actively supporting Mr Seeliger to oust our Client as WS President in the upcoming election (emphasis added):

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

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

While I did not hear the conversation between Gerardo Seeliger, Josep Pla, Ser Miang and Gerard Esteva, it appeared to me based on my conversations with Gerardo and Gerard that day that the four of them were discussing how they could support Gerardo's campaign to run for President of World Sailing."

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

An independent EO should be asked to review the entire processes of the Ethics Commission with regards to Cases 2 and 3, to see whether conflicts were disclosed and managed, or, as we suspect, simply brushed to one side and ignored.

Violations of the Ethics Code:

Accordingly, we consider that Mr Miang violated *inter alia* the following provision of the Ethics Code:

- Article 1.3 (d) – failure to respect applicable rules concerning conflicts of interests (particularly, the WS Conflict of Interest Policy)
- Article 1.9 (b) – failure to avoid any situation that could lead to a conflict of interests
- Article 1.9 (c) – performance of functions where there is an existing or potential conflict of interest, without proper disclosure
- Article 1.9 (d) – failure to consider an existing or potential conflict of interest by referral to the Ethics Commission for determination

Conclusion

We respectfully request that you please kindly refer this complaint to the Ethics Commission to investigate the alleged breaches of the Ethics Code by Mr Neupert and Mr Miang, and if appropriate to impose the necessary sanctions.

For the avoidance of doubt, and in the interests of fairness and respect for the principles of natural justice, **for obvious reasons we trust that Mr Neupert and Mr Miang will be excluded from any deliberations of the Ethics Commission, procedural or otherwise, in relation to this Complaint.** Further, whilst this Complaint is ongoing, it would not be appropriate for either gentleman to be involved with Cases 2 and/or 3 either.

Lastly, we wish to emphasise the importance of a confidentiality order being set regarding this Complaint in order to protect all persons involved, and the reputation of WS.

We await further instructions from you regarding the appointment of an independent EO to investigate this Complaint, and further instructions from the Ethics Commission regarding proceeding with this matter generally.

In the meantime, all of our client's rights remain reserved.

Yours faithfully,



Mills & Reeve LLP