

**BEFORE THE WORLD SAILING JUDICIAL BOARD**

**INDEPENDENT PANEL MEMBERS**

**IN THE MATTER OF**

**MR MURRAY JONES IJ**

**V**

**RACE OFFICIALS COMMITTEE**

**DECISION OF INDEPENDENT PANEL**

1 This is a decision of the Independent Panel appointed by the Judicial Board of World Sailing (hereinafter - WS) in accordance with WS Regulation 35.8.3. The Judicial Board appointed the Independent Panel consisting of:

1.1 Mr Gus Lewis;

1.2 Mr Joshua Coleman-Pecha; and

1.3 Mr Roman Khodykin (the chairman).

2 In the heart of the decision is the appeal lodged by Mr Murray Jones, an International Judge, against the Decision of the Investigation Panel (hereinafter referred to as "**the IP**") dated 28 January 2021 (which was approved by the Race Officials Committee and communicated to Mr Jones on 10 March 2021 by WS Sport manager Madeleine Dunn).

**The relevant background**

3 On 5 August 2020 a hearing was conducted by a protest committee in relation to a protest submitted on behalf of the sailing boat "KRAKEN" in connection with an incident which took place during Race 2 of the Combined Clubs Winter Series organised by the Royal Yacht Club of Tasmania (hereinafter – the Series). The protest committee's decision was that the protest submitted on behalf of "KRAKEN" was to be dismissed because the other boat had taken the appropriate penalty by retiring. At that protest hearing, "KRAKEN" did not request redress. The protest time limit for Race 2 was 14:00 on 3 August 2020.

- 4 Several days prior to Race 3 in the Series, damage to the mast of "KRAKEN" had been identified and the boat was unable to start in Race 3. On 16 August 2020, shortly after the start of Race 3 in the Series, a request for redress was submitted on behalf of "KRAKEN" in connection with the incident in Race 2.
- 5 The request for redress submitted on behalf of "KRAKEN" was heard by a protest committee on 20 August 2020. That protest committee was chaired by Mr Jones and, during the hearing, "KRAKEN" was represented by Mr Glen Stanaway.
- 6 The protest committee concluded that requests for redress were required to be lodged within the time limit for protests or as soon as reasonably possible after learning of the reasons for making the request. "KRAKEN" learnt that the damage from the Race 2 incident would prevent her from sailing in Race 3 several days before Race 3 but did not lodge a request for redress until after Race 3 had started.
- 7 The protest committee further concluded that it was only able to extend the time limit for submitting a request for redress if there were good reason to do so, and that no such good reason had been provided by KRAKEN. Further, the remedy available to the protest committee was to award to KRAKEN average points in other races in the series. Because KRAKEN did not sail in other races or came last, there was no practical purpose to the request for redress. The protest committee accordingly dismissed the request for redress.
- 8 It appears to be undisputed that, following the conclusion of the hearing in respect of the request for redress, Mr Jones spoke to Mr Stanaway and said something along the following lines:
- "That is the end of formal proceedings as far as the appeal goes but I do want to say something to you. It is not my usual practice to deliver a sermon after a protest hearing, but for you Glen I am going to make an exception. Someone in your position should have known that this request had no possibility of being granted. That you have chosen to waste the time of volunteers with such a frivolous, fatuous and vexatious request does you no credit."*
- 9 On 23 August 2020, Mr Stanaway filed a disciplinary complaint with Royal Yacht Club of Tasmania (hereinafter – RYCT) in connection with Mr Jones's comments.

**The Royal Yacht Club of Tasmania's decision on the complaint dated 23 August 2020 (hereinafter – the RYCT Decision)**

10 The decision of RYCT dealt with a number of respondents. We are only concerned with the findings made by RYCT with respect to Mr Jones. As far the complaint against Mr Jones is concerned, RYCT held:

- 10.1 The complaint was inconclusive.
- 10.2 The allegations that Mr Jones's comments were aggressive, lengthy or a "tirade" were found to be unsupported.
- 10.3 Mr Jones maintained his position that Mr Stanaway's actions supporting the request for redress were frivolous and vexatious. This was particularly the case given the deep level of skill and experience Mr Stanaway has in the field of racing rules and regulation, protests, appeals and hearings.
- 10.4 Mr Jones acknowledged that he 'possibly' should have chosen a more private place or a different time to make his comments.
- 10.5 Mr Jones maintained that in relation to the Code of Conduct he had been fair and considerate but that his 'enthusiasm for honesty' conflicted with respecting the rights, dignity and worth of others, whilst also noting his view of the frivolous nature of the complaint.
- 10.6 Noting the highly regarded and longstanding professional reputation of Mr Jones, RYCT believed that this to be, at most, an isolated error of judgment which is unlikely to be repeated.
- 10.7 RYCT concluded that there was no breach of the RYCT General Code of Conduct.
- 10.8 No further action was taken.

## **Regulation 32 Investigation**

- 11 On 2 September 2020, Madeleine Dunn, the race officials' manager at World Sailing, wrote to Mr Jones on behalf of chairman of the Race Officials Committee that it received a complaint from Mr Stanaway under Regulation 32. The complaint was limited to five discrete points. It was alleged that Mr Jones:
- 11.1 aggressively criticized Mr Stanaway at length for wasting volunteer race officials' time with a frivolous request for redress;
  - 11.2 stated he was very disappointed with Mr Stanaway in calling him out to hear the matter;
  - 11.3 as chairman of the protest committee, did not stop Phil Jackman, a member of the protest committee, when he talked aggressively to Mr Stanaway;
  - 11.4 demonstrated inappropriate behaviour in front of inexperienced and untrained protest committee members; and
  - 11.5 publicly criticised the career professionalism of Mr Stanaway.
- 12 Mr Jones was asked whether he accepted that the allegation above were correct or if he required an investigation to be undertaken to establish the facts.
- 13 On 7 October 2020 Mr Jones submitted a statement in response. In the response, Mr Jones rejected all allegations. He stood by his comments that the request for redress was vexatious. In particular, and without limitation, Mr Jones highlighted that:
- 13.1 the request had no prospects of success;
  - 13.2 Mr Stanaway knew or should have known about this given his involvement with Australian Sailing; and
  - 13.3 the hearing was not public as only two observers were present.

### **The Decision of the Investigation Panel dated 28 January 2021**

- 14 On 28 January 2021 the IP, consisting of Timo Hass (Germany), Dimitris Dimou (Greece) and Tatiana Ermakova (Russia), delivered its recommendation to the Chairman of the WS Race Officials Committee and its Sub-committees. The Chairman

of the WS Race Officials Committee and its Sub-committees decided to accept the recommendation of the IP (hereinafter "**the IP Decision**").

15 The IP Decision imposed a sanction – a reprimand – on Mr Jones under paragraph 35.7.1 of Appendix 6 – Disciplinary, Appeals and Review Code of the 2021 World Sailing Regulations.

16 The IP established that after the protest hearing had been closed, Mr Jones made a number of statements, including:

16.1 That he does not usually "*deliver a sermon after a protest hearing*" but will "*make an exception*" for the complainant;

16.2 That the complainant "*has chosen to waste the time of volunteers with such a frivolous, fatuous and vexatious request*" and

16.3 That the request does the complainant "*no credit*" (see, in particular, ¶20 of the IP Decision).

17 The IP was not satisfied that, on evidence before it, that the remarks were made by Mr Jones in an aggressive manner and represented "a tirade" (¶22 of the IP Decision).

18 The IP held that in his statement Mr Jones agreed that he did not strictly follow the guidelines set out in the World Sailing Manual (¶17 of the IP Decision).

19 These facts, mentioned in paragraphs 16 - 17 above, seem to be agreed.

20 The disputed parts of the IP Decision seem to be:

20.1 Paragraphs 18 and 19:

*"The second paragraph of section D. 6 states that "...judges should be firm, respectful and helpful to all participants". In addition, the fifth paragraph of section K. 1, second sentence states that the "the protest committee should be polite but always in control." Furthermore, the fifth paragraph of section K. 24 states that a protest committee can give clarification required by a party to the hearing immediately, "but no further discussion should be permitted at this time."*

*The rules of conduct stated in the World Sailing Judges' Manual apply not only during the hearing itself but also after the hearing is closed, It is improper for a judge, without being asked, to lecture or disparage a party to the hearing or otherwise recommence the closed hearing."*

20.2 ¶23 of the IP Decision:

*"Considering the statements of the parties it must be assumed that the remarks by MJ were at least perceived by the complainant as condescending and humiliating."*

20.3 ¶¶24 and 23

*"The statements by [Mr Jones] were not made in private. A hearing where observers, the parties and the protest committee are present is not a public event, but neither is it a strictly private occasion.*

*By making the inappropriate remarks in the presence of others, [Mr Jones] caused reputational damage to World Sailing and other International Race Officials, as it would appear to those involved that his behaviour was unacceptable."*

21 It appears that Mr Jones does not deny making these statements. He expressly admitted that he did not want to make these statements in private because the complainant would not take them seriously (¶21 of the IP Decision). He also showed no remorse and stood by his comments (¶26 of the IP Decision).

22 As a result, the IP concluded that Mr Jones made inappropriate remarks, caused reputational damage to World Sailing and other international race officials and that overall Mr Jones's behaviour was inappropriate. The IP recommended that the ROC should give Mr Murray a reprimand.

23 The Chairman of the ROC and the Chairs/Vice-chairs of the sub-committees have, in accordance with the World Sailing Regulation 32.8 and 32.9 reviewed the recommendation contained in the IP Decision and confirmed the sanction. This was communicated to Mr Jones by a letter of Ms Madeleine Dunn dated 10 March 2021.

### **Appeal**

24 Mr Jones disagreed with the IP Decision and filed the present Appeal. Mr Jones believes that the decision *"was based on an investigation which lacked rigour and which did not provide an adequate representation of all relevant circumstances in its report to the Chairman of the Race Officials Committee and its Sub-Committees"*.

25 Mr Jones alleges that the IP:

25.1 Did not conduct any interviews, especially 3<sup>rd</sup> party witnesses who would have verified the accuracy of my statements and the inaccuracies, exaggerations and embellishments of Mr Stanaway's complaint.

- 25.2 Did not properly consider all the documents provided to World Sailing as evidenced by:
- 25.2.1 The allegation that Nick Hutton, an International Race Officer, had suggested that the complainant was a “know it all” from Sydney. This comment was clearly acknowledged by Mr Hutton in his response to the allegation, yet the panel could not ‘find to its satisfaction’ that such a comment was made (para 12).
- 25.2.2 The statement by the IP that they do not “comment on the request for redress because the documents were not fully submitted to this panel” whereas both the request for redress and the decision were provided to the IP when Mr Jones lodged his response to the allegations on 7 October 2020
- 25.3 Failed to demonstrate how remarks made at a hearing which was not a public event have caused reputational damage to World Sailing and other International Race Officials.
- 25.4 Categorised the guidelines provided by the World Sailing Judges Manual as ‘rules of conduct’ when clearly they are only guidelines. The manual describes itself as a ‘learning tool’ and a ‘reference guide’. It does not provide advice on every conceivable set of circumstances and there needs always to be some allowance for a judge to make adjustments when confronted with an extraordinary scenario.
- 25.5 Failed to provide details to the Chairman of the Race Officials Committee and its Sub-committees of all the circumstances which led to the counselling of the complainant.
- 25.6 Failed to properly consider the background and knowledge of the complainant, in particular:
- 25.6.1 His knowledge of the Racing Rules of Sailing as a past International Judge
- 25.6.2 His long-term senior management position as ‘Head of Safety, Rules and Representation’ for Australian Sailing
- 25.6.3 His position as Chair of World Sailing’s Offshore Special Regulations Working Party

- 25.7 Failed to make it clear to the Chairman of the Race Officials Committee and its Sub-committees that Mr Stanaway's statement was based substantially on exaggerations and at least one blatant fabrication.
- 25.8 Did not consider the strong likelihood that Mr Stanaway was relying on his positions with Australian Sailing and World Sailing to persuade a less-knowledgeable Protest Committee that his request for redress was valid while knowing it was not.
- 25.9 Failed to acknowledge that a rigorous examination of the complaint by the Royal Yacht Club of Tasmania had been conducted (including face-to-face interviews) and which concluded that there had been no breach of the club's code of conduct.
- 26 Mr Jones also noted that the IP:
- 26.1 Acknowledged that his comments were made *after* the hearing (¶16 of the IP Decision)
- 26.2 Agreed that his remarks were *not* expressed in an aggressive way or as a tirade.
- 27 Mr Jones submitted that the real issue is whether or not these words, *in all the circumstances of this matter*, and delivered in a calm and reasonable manner, and in the presence of only two other people outside the protest committee, can be considered a breach of World Sailing's Official Code of Conduct.
- The Hearing of Mr Jones's Appeal**
- 28 On 30 August 2021, the Independent Panel held a remote hearing via zoom (hereinafter – "**the Hearing**"). At the Hearing, the following persons were present:
- 29 The Independent Panel:
- 29.1 Mr Gus Lewis;
- 29.2 Mr Joshua Coleman-Pecha;
- 29.3 Mr Roman Khodykin (chairman).
- 30 The Appellant – Mr Murray Jones.
- 31 For the Respondent – the ROC – Mr Ricardo Navarro (ROC's Chair).



32 Mr Nick Hutton, a witness called by Mr Jones.

### **The scope of the review**

33 Neither the WS Regulations nor the procedural rules provide clear guidance as to what is the remit of the Independent Panel.

34 However, based on the spirit of the WS Regulations, the very nature of the appeal and common sense, the Independent Panel is of the view that the prima facie objective of the Independent Panel is to review the procedure followed i.e. did the ROC act properly in accordance with the rules and regulations.

35 However, the Independent Panel is not necessarily limited in considering the merits of the decision if it considers the ROC acted outside the boundaries of reasonableness or in bad faith.

36 Therefore, the Independent Panel will not review the case *de novo*, it will only review whether the ROC, in issuing its IP Decision, followed the procedure, acted properly and whether the IP Decision is within the boundaries of reasonableness and good faith.

37 In terms of the applicable standard of proof, the Independent Panel is dealing with a disciplinary matter and the usual standard of proof for such matters is that of "comfortable satisfaction", whereby the evidential threshold is proportionate to the seriousness of the alleged offence. Given that in this case a serious offence is alleged against an International Judge, we believe that a high evidential threshold is appropriate. Moreover, any doubt should be construed in favour of the respondent.

### **What are the breaches established in the IP Decision**

38 The Independent Panel finds it strange that the IP Decision is not based on any independent investigation; rather it is based on the documents which were subject of the disciplinary complaint at Royal Yacht Club of Tasmania ("**RYCT**").

39 The Independent Panel believes that it was not reasonable for the IP to rely wholly on the investigation done by another organisation under a different code of conduct. Moreover, the RYCT Decision found with respect to Mr Jones that the complaint was "inconclusive" and held that Mr Jones committed no breach of the RYCT Code of Conduct. In the circumstances, the most prudent course for the IP would have been to conduct its own investigation and to reach out to the witnesses directly. Yet, the IP did not really conduct its own investigation.

40 If the IP decided to rely on the RYCT investigation materials, all doubts should have been construed in favour of Mr Jones. Effectively, the IP could only proceed without an independent investigation if what Mr Jones admits he said was in itself a breach of the WS Code of Conduct.

41 Against this background, the Independent Panel reviewed the IP Decision. It appears that findings in ¶¶20-22 of the IP Decision are not in dispute. At the Hearing this was confirmed by Mr Jones.

42 However, Mr Jones disputes the conclusion which the IP reached in ¶23 of the IP Decision which reads as follows:

*"Considering the statements of the parties it must be assumed that the remarks by [Mr Jones] were at least perceived by the complainant as condescending and humiliating."*

43 Having considered the evidence which was before the IP and having heard the parties and the witness at the Hearing, the Independent Panel is of the view that the conclusion reached in ¶23 is unreasonable and the IP ought properly not to have reached it, for the following reasons.

43.1 The IP Decision says in ¶23 "it must be assumed". This is not a proper standard of proof in a disciplinary matter (see paragraph 37 above for more detail). The IP should have been satisfied that it had had clear evidence to that effect.

43.2 The IP Decision does not explain on what basis it was assumed that the comments were perceived by Mr Stanaway as condescending and humiliating.

43.3 The words used by Mr Jones ("frivolous", "fatuous", "vexatious") were predominantly directed at the request for redress rather than at Mr Stanaway himself. The only comment about Mr Stanaway personally was that it did him "no credit" which, in itself, it is difficult to interpret as being humiliating or condescending.

43.4 The IP Decision found that there was not sufficient evidence to conclude that the remarks have been expressed in an aggressive manner or as a "tirade". This finding does not sit comfortably with the finding reached in ¶23 of the IP Decision.

43.5 The witness called by Mr Jones to testify at the hearing – Mr Hutton – also confirmed that the comments were made in a “professionally conversational” manner.

43.6 The RYCT Decision on which the IP Decision is said to have been based cites on page 9 a statement of Mr Phil Jackman who testified that *"If you also look at the collective experience and knowledge of the named respondents, you would realise that any embarrassment felt by Glen [Stanaway] was as a result of losing the protest in front of the boat owner and his peers."* The IP Decision is inconsistent with this testimony, yet no independent investigation had been undertaken.

43.7 Finally, the RYCT Decision made the following conclusion with respect of Mr Jones: *"we do not support the allegations that Mr Jones' comments were aggressive, lengthy or a tirade"*.

44 Therefore, it was wrong for the IP to have assumed that the complainant's evidence as to how he perceived Mr Jones's comments was sound. The conclusion in ¶23 of the IP Decision is not supported by RYCT Decision. The Independent Panel believes that the conclusion reached in ¶23 of the IP Decision ought properly to be disregarded.

#### **Failure to follow provisions of the WS Judges' Manual**

45 The IP Decision held that Mr Jones did not strictly follow sections D. 6, K. 1 and K. 24 of the WS Judges' Manual.

46 The Independent Panel agrees with the conclusion that Mr Jones did not follow Section K. 24 of the Judges' Manual which says that after the conclusion of the hearing *"no further discussion should be permitted"*. In fact, Mr Jones agreed with that in his submissions and confirmed it, once again, at the Hearing.

Section D. 6 states that *"...judges should be firm, respectful and helpful to the participants"*. The IP Decision does not explain why Mr Jones was in breach of this provision. We cannot see on the evidence before us that Mr Jones was not firm or unhelpful to the participants. In the Independent Panel's view the evidence is questionable as to whether, by making his comments, MJ was not “respectful” to Mr Stanaway. It is not explained why the IP thought that the comments were not respectful. However, we believe that it was not unreasonable for the IP to reach the conclusion that section D. 6 was not strictly followed as far as it stipulated that judges should be “respectful”.

47 Finally, the Independent Panel is of the view, that the IP Decision is wrong in finding that Section K. 1 was not followed. This provision reads:

*"Any hearing should be conducted in a formal but friendly way so that the parties feel they had their evidence seriously considered. In a hearing the protest committee should be polite but always in control."*

48 It was not alleged by Mr Stanaway that his evidence was not properly considered. In fact he never disputed the correctness of the outcome of the hearing of his request for redress. The second sentence clearly says that it applies "in a hearing". During the hearing before the IP, both Mr Jones and ROC confirmed their understanding that the comments were made by Mr Jones after the hearing. Therefore, Section K. 1 is not applicable.

49 In summary, the Independent Panel is of the view the IP's conclusion that Section K. 24 was not strictly followed was reasonable. The Independent Panel is also of the view that the IP's conclusion that Section D. 6 was not strictly followed, at least in part, was also reasonable. The Independent Panel holds, though, that the IP was wrong to conclude that Section K. 1 of the Judges' Manual was not followed.

**Does Mr Jones' failure to comply with provisions of the Judges' Manual constitute the basis for imposing a penalty on him?**

50 That brings us to the next question – whether a failure to follow provisions of the Judges' Manual can be a basis for imposing a penalty under the WS Regulations.

51 The question which arises is whether sections K. 24 and D. 6 are mandatory and whether a penalty could have been imposed in accordance with Regulation 32 for non-compliance with those provisions of the Judges' Manual

52 The Preface to the Judges' Manual reads as follows:

*"This manual is designed to be a learning tool for judges who are gathering knowledge and experience with the aim of becoming International Judges. It also should be a reference guide for [sic!] exiting<sup>1</sup> International Judges with the aim of contributing to contingency in judging all over the world".*

53 This statement refers to the Judges' Manual as a "reference guide" but nowhere does it say that the document is binding and must be followed at all times.

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<sup>1</sup> In all likelihood it is a typo and the word should read "existing".

- 54 The IP Decision does not cite any breaches of the Code of Conduct as the basis for imposing the penalty.
- 55 ROC in its Reply to the Appeal referred to Article 2.1 of the WS Code of Conduct which states:
- "World sailing race officials shall maintain a high level of understanding and application of the rules, cases, calls, Q&As, procedures and policies that are relevant to their discipline. **In particular, World Sailing policies and procedures set out in the race officials' manuals should be followed.**"* (highlighted by ROC).
- 56 ROC seems to rely on the highlighted part of Article 2.1 as imposing obligations on race officials.
- 57 The Independent Panel notes that the Code of Conduct uses different words.
- 57.1 Some provisions use the word "must" which is clearly an obligation. For example, in Article 1.1 the Code of Conduct states that the race officials *"must uphold the World Sailing regulations, policies and procedures and at no time allow their conduct to bring the sport into disrepute"*. Similarly, Article 9.1 reads *"World Sailing Officials must not consume alcohol during the officiating day..."* Almost all of the provisions of the Code of Conduct use the word "must". Non-compliance with these provisions will be a breach of the Code of Conduct.
- 57.2 Yet, there are other provisions, including Article 2.1, which use the word "should". Another example of the use of this word is Article 10.2.
- 58 "Must" or "shall" have been used consistently throughout WS Regulations, Rules and other official documentation where something is required to be dealt with in the prescribed manner.
- 59 When the relevant provision expressed with a word "should" it is clear that it means a recommendation rather than an obligation. An International Judge is expected to follow recommendations but equally he or she is allowed, in exceptional circumstances, to deviate from the suggested conduct without subjecting himself or herself to a penalty for a breach of conduct.
- 60 The Independent Panel cannot think of any reason why in this context we should not apply the ordinary meanings of the words "must" and "should", being that "must" refers to an obligation whereas "should" refers to a recommendation.

- 61 The ROC relies on Article 2.1 of the WS Code of Conduct but it cannot escape our attention that the second sentence of this article uses the word "should" which is, in its ordinary meaning, a recommendation rather than an obligation.
- 62 Even if Article 1.1 of the WS Code of Conduct were to make compliance with the Judge's Manual obligatory, each of the three provisions in the Judge's Manual which the IP concluded Mr Jones had failed to follow (i.e. sections D. 6, K. 1 and K. 24) was expressed in its own terms to be a recommendation (i.e. "should") rather than an obligation (i.e. "must") (see paragraph 20.1 above).
- 63 The rules should be construed against the rule writer. Moreover, as described in paragraph 37 above, given that it is a disciplinary matter, any doubt should be construed in favour of Mr Jones.
- 64 Therefore, in the Independent Panel's view the IP was wrong to conclude that Mr Jones committed misconduct by not strictly complying with sections D. 6, K. 1 and K. 24 in the Judges' Manual. The IP assumed that these three provisions of the Judges' Manual are obligatory but the language used in each of them makes it clear that they are in fact recommendations. In the Independent Panel's view, a failure to follow a recommendation cannot form a basis of a finding of misconduct or the imposition of any penalty.
- 65 The Independent Panel notes that this finding should not be read as encouraging any members of protest committees not to follow the recommendations in the Judges' Manual. Further, the Independent Panel does not wish to encourage Judges to 'take matters into their own hands' and ignore provision K. 24 of the Judges' Manual, which states that there should be no communication outside of hearings. However, no penalty can be validly imposed for non-compliance with recommendatory provisions of the Judges' Manual. Should World Sailing wish to make a provision in the Judges' Manual obligatory then the provision must be expressed in clear terms to that effect (and the Code of Conduct must also make it clear that compliance with the Judges' Manual is obligatory) so that a failure to follow that provision may form the basis for disciplinary action and the imposition of relevant sanctions.
- 66 Against this background, the Independent Panel considers that the IP ought properly not to have concluded that Mr Jones had acted in breach of an obligation imposed by the Judges' Manual. Consequently, the penalty for a breach of the Judges' Manual imposed as a consequence of the IP Decision is unreasonable and cannot be sustained.

## Potential Breach of the Code of Conduct

67 Although the IP Decision does not contain any findings on the breaches of the Code of Conduct, the Independent Panel has also considered whether, the findings made in the IP Decision, could have implied such a breach.

68 ¶¶23 and 24 of the IP Decision read:

*"The statements by [Mr Jones] were not made in private. A hearing where observers, the parties and the protest committee are present is not a public event, but neither it is a strictly private occasion.*

*By making the inappropriate remarks in the presence of others, [Mr Jones] caused reputational damage to World Sailing and other International Race Officials, as it would appear to those involved that his behaviour was unacceptable."*

69 The IP Decision might have had in mind a potential breach of Article 1.1 of the Code of Conduct without expressly referring to it.

70 Article 1.1 the Code of Conduct states that the race officials *"must uphold the World Sailing regulations, policies and procedures and at no time allow their conduct to bring the sport into disrepute"*.

71 Therefore, if the actions of Mr Jones had a potential of bringing the sport of sailing into disrepute, the IP Decision could still be upheld.

72 However, the Independent Panel is of the opinion that the IP Decision fell far short of establishing a breach of that provision.

73 We cannot see any evidence to support the suggestion that any reputational damage has been caused. Even if Mr Jones' conduct was inappropriate, it does not necessarily follow that it causes reputational damage to World Sailing or brings the sport into disrepute. Mr Jones made his remarks at a hearing for redress which was held behind closed doors. Apart from the members of the protest committee, there were only two observers but they were not strangers. One of them – Mr Hutton – was a representative of the organising authority and another one was the owner of the boat that lodged the request. Had the remarks been made in front of TV cameras or in press, it could have had a potential of bringing the sport into disrepute. However, the Independent Panel simply do not see on what basis the IP Decision was made that the remarks made at the closed hearing have had the same effect.

74 Therefore, the penalty for that breach is also unsustainable.

**Next steps**

- 75 The Independent Panel also considered whether it should remit the matter back to the IP for their reconsideration.
- 76 As the ROC have been appointed as experts in their field, there should be comfort that they have the necessary knowledge and ability to make the correct decision. As such, the outcome of review should, in normal circumstances (if the appeal/review is successful), result in the matter being remitted back to the ROC with guidance and/or directions.
- 77 However, in this case, the Independent Panel sees little utility in remitting the matter back to the IP. This is because, even if they investigate all allegations afresh, the IP will not be able to overcome our finding that the three relevant provisions in the Judges' Manual are not obligatory. The Independent Panel believes that the correct way forward is to set aside the IP Decision and to revoke the sanction imposed on Mr Jones.

**Decision**

- 78 The Independent Panel hereby sets aside the IP Decision and revokes the penalty imposed by and adopted by the ROC.
- 79 This Decision is delivered in London, UK on 16 September 2021.



Gus Lewis



Joshua Coleman-Pecha



Roman Khodykin

(chair)