For Consultation

Equipment Cheating Review Report

1. Introduction

1.1 At its meeting in February 2019, the Board requested the Executive Office appoint a review group\(^1\) to examine:

(a) Historic review of equipment cheating cases

(b) Improvements in the investigation and prosecution of equipment cheating (both at event and WS level)

(c) The use of discretionary penalties for equipment infringements, and in particular whether the increased use of DPs has encouraged sailors/teams to take the risk of cheating

(d) The consequences for sailors who present boats at inspection which do not comply (and whether these consequences are appropriate or need to be changed).

1.2 The Group has met several times and considered the following topics:

(a) Whether the current system in place to control equipment is non-effective, outdated and inconsistent in its implementation, methods and results.

(b) The transition of the sport to more professionalized campaigns (teams have access to new technology but the inspections have relied on the same methods for too long)

(c) The culture within the IM community, relations with class associations and sailors, level of technical knowledge, approach to reporting etc.

(d) The severity of the penalty if cheating is confirmed and the consistency of the penalty with other cheating cases

(e) How to achieve consistency at WCS events

(f) Consistency in equipment protest procedures

(g) The burden of proof

(h) The availability of EI time and resources v sailing team time and resources

(i) Other production control methods to control and discourage compliance

(j) The risk-reward for sailors and Olympic teams

(k) The benefits of Day 0 and at what events it should be used.

(l) Are class rules good enough or too much open to interpretation? What if all boats fail to comply?

1.3 The Group conducted an in-depth historic review of cases and provided a detailed report to the Board. A summary of the outcomes is provided in section 2. Its recommendations are set out in sections 3 to 7.

1.4 Our recommendations are limited to World Sailing Events and world and continental championships of the Olympic Classes.

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\(^1\) As reported to the Board at its meeting in March 2019, the Executive Office appointed: Jon Napier IJ IU ITD (Director of Integrity & Governance & Chair), Carlos de Beltran IM (Measurement Committee, 36\(^{th}\) America’s Cup), Bas Edmonds IM (RS:X Chief Class Measurer / ERSC Vice-Chair) Alex Finsterbusch IM (Vice-Chair, IMSC), Jaime Navarro IM (Head of Technical & Offshore) and Jan Stage IJ IU (Chair, Race Officials Committee).
2. **Historic Review**

2.1 As requested, the Group reviewed all the papers connected with recent disciplinary cases across the sport connected with equipment cheating for lessons learned.

2.2 The Group’s findings were as follows:

(a) Class rules need to include full specifications for equipment inspectors to compare the boats against. For some classes, the class rules do not include full measurements/. This means boats under inspection must be compared against other boats to determine if a variance is normal (which is not optimal from an evidence perspective). Because of this, the co-operation and availability of manufacturers is key.

(b) Guidance for WS DIOs must be developed in line with World Sailing’s Misconduct Guidance (which is used at events).

(c) While it is important that the integrity of the process is maintained and the decision is made by an independent person, further restrictions / guidelines and a group decision (ie. a panel rather than an individual) may be appropriate.

(d) Measurers did not take key measurements due to competitors obstructing access to parts of boats and did not insist this was given. This highlighted that it is important for equipment inspectors/measurers to undertake a thorough and complete inspection at an event to obtain the best evidence possible.

(e) One case highlighted the issue with taking measurements before an event because stating that a boat has passed a measurement inspection can imply it is compliant (even though some time may pass between measurement and racing). Other sports (e.g. Formula 1) conduct measurements immediately after the event so there can be no implication or suggestion that equipment is automatically compliant because it has been inspected.

(f) It is inappropriate to use the power to reject an entry under RRS 76.1 to deal with a case of equipment cheating.

(g) Class rules which are not robust and thorough make it difficult for juries to penalise under. At present, Classes must address these issues because World Sailing has no power to compel the Class to amend / improve their rules. In some cases, attempts made to rectify issues have not resolved them.

(h) Investigations have been hindered because the officials did not have the right tools and equipment available to them at the event to determine whether the illegal modification had been made.

3. **Class Rules**

3.1 The Group considers that there is an inconsistent approach to class rules both within, and between, Olympic Classes. Olympic Class technical committees are often volunteer led and their members lack the time commitment, expertise and experience to undertake the important role expected of them.

3.2 There is also insufficient control of class rule issues by World Sailing. Although the new Olympic Classes Contract goes a long way to resolving some issues, the fundamental structure remains that Classes, not World Sailing, originate and propose class rule amendments. The WS Technical Department are aware that some known issues have still not been resolved in the Olympic Classes.

3.3 At present, there are a range of different bodies with responsibility: class technical committees, class executive committees, Equipment Committee, Equipment Rules Subcommittee, International Measurers Sub-committee and the Executive Office.
3.4 The Group considers there should be a single dedicated body for controlling the Olympic Class Rules which also supports and monitors equipment inspection and factory audits etc. This body would consist of experts appointed by World Sailing and of representatives of each Olympic Class with wider technical support.

3.5 This body should undertake the functions of the existing Olympic Classes technical committees. Terms of reference would need to be developed such that class rule changes were limited to points in the cycle to provide certainty to sailors.

3.6 In particular the new body should have authority, if necessary as a last resort, to impose class rule amendments on Olympic Classes and changes to production specifications. The Group considers this is necessary to ensure that issues concerning safety, class rule wording, quality control and standardisation issues are actually acted upon and not left unresolved.

3.7 This recommendation will require detailed review of the Regulations and procedures governing class rules, and may even require change to class constitutions and the RRS if necessary.

Recommendation
World Sailing should establish a single body to manage Olympic class rules, support and monitor equipment inspection and manufacturer quality control. The body should be able to direct class technical committees if required (with the power to change class rules if necessary as a last resort).

4. ‘Day Zero’ and Equipment Inspection

4.1 The Group has reviewed the Day Zero concept. Overall, we consider that it is well-intentioned but has not resolved the issues it was intended to address. The culture amongst event technical committees (measurers and equipment inspectors) has not improved as expected, non-compliance is still wide-spread and only basic checks are being undertaken at top-level events.

4.2 The Group has determined a number of different factors increase equipment compliance, ensure appropriate deterrents are in place and to have a robust method of dealing with those who choose to break the rules.

4.3 Sailing promotes itself as a self-policing sport. RRS 78.1 puts the responsibility of equipment compliance directly onto the competitor.

Recommendation
RRS 78.1 needs review by the Racing Rules Committee as to placement within the rule book. The Group considers it should sit in Part 4, not Part 6 (or in a specific equipment section of the RRS).

4.4 Pre-event equipment inspection is a process in which a sailor puts forward equipment to the equipment inspector who is responsible for checking the equipment. If any non-compliance is found, the problem is corrected and then re-submitted and then passed.

4.5 This does not stop the sailor from then amending the equipment before the first race (changing blocks, putting different fittings on, changing fittings and settings etc). In a protest situation, the boat has now been “signed off” by an equipment inspector and therefore the ‘blame’ is shared between sailor and the official.

4.6 The current process of pre-event inspection goes against the self-policing and individual responsibility principles. The concept of checking a sailor’s equipment prior to racing is outdated, ineffective and does not provide a level playing field. Within the Olympic Classes, the amount of time and money that is spent on perfecting equipment by MNAs is disproportionate to the amount of money spent on policing equipment at events. Sailors
For Consultation

increasingly approach equipment compliance and inspection on a risk/reward basis (particular when the penalties are discretionary).

4.7 For Olympic class events, where sailors are more professional, better funded and have full time coaches, it should not be the responsibility of a volunteer official to check the equipment prior to racing. For certain events, the pre-inspection checks are made almost pointless because equipment will then be taken away to be further worked on by the teams.

4.8 In particular, the Group does not consider that World or Continental Championships should be seen as ‘educational’ in terms of equipment compliance (a term often heard used).

4.9 Instead, full resources should be put into post-race inspections to ensure that equipment is compliant with the rules. Sailors would still work on the “risk” perspective of being stopped, but along with a reduction in discretionary penalties, this can be managed. The costs would balance out for the organisation whilst increasing training time for the sailors.

4.10 Classes would need to review some aspects of the class rules with regards to wet weighing etc and establishing wet weights but there are no major drawbacks in the Group’s opinion. Boats may need to be quarantined overnight and a protest would in practical terms be submitted the following day. Whilst deviating from the current norm, this should not be a reason to not implement such a system.

Recommendation
Pre-event inspections should cease and resources focussed instead on more effective and targeted post-race inspections.

5. Discretionary Penalties

5.1 We were requested to review the use of discretionary penalties (DPs) as part of this review.

5.2 Until the Beijing Olympiad, sailing has worked on the principle that a boat that breaks a rule must take a penalty (for certain on the water infringements), retire or be disqualified. This principle applied regardless of the severity of the rule breach. Therefore, breaches of class rules – even for minor items such as the length or thickness of tow rope – resulted in a disqualification.

5.3 This concept has always been capable of being changed by the notice of race or sailing instructions (which can specify a different penalty for breaches of certain types of rules).

5.4 Approximately 15 years ago, sailing began introducing the concept of DPs. These allowed protest committees to impose a penalty less than disqualification for a breach of the rules (usually a points or time penalty). Over time, the use of DPs has grown extensively and they are now common at most regattas.

5.5 In an effort to achieve greater consistency, World Sailing publishes a recommended discretionary penalty policy for use by international juries². The use of this policy is not mandatory and it is for each international jury to decide how it will apply any DPs.

5.6 As international jury decisions are not reported to World Sailing, there is no database or record of decisions to review. As a result, it is difficult to ensure consistency between international juries on the use of DPs.

Discussion

5.7 The Group had difficulty coming to a conclusion on this topic. The Group agrees that the increase in the use of DPs has encouraged sailors and teams to adopt a laxer attitude to equipment rule compliance (in the knowledge they are likely to be given a points penalty if caught).

5.8 In addition, the growth of DPs has caused inconsistency between juries as, although a standard policy is recommended, it is not mandatory and there is no specific training in the use of DPs. Jury decisions involving DPs are frequently poorly written and do not adequately explain the factors on which a jury has exercised its discretion.

5.9 There is little statistical evidence available – there is no meaningful reporting of protest numbers and issues from World sailing Events post-event. We consider that this should be initiated.

5.10 One of the key issues which causes problems for juries is the question of whether an equipment rules breach has caused an increase in performance. This is the current recommended guideline of penalties to be applied:

<table>
<thead>
<tr>
<th>Equipment outside of measurement tolerances (excluding wear and tear)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No possible effect on boat speed</td>
</tr>
<tr>
<td>Possible but not significant effect on performance</td>
</tr>
<tr>
<td>Any significant effect on performance</td>
</tr>
</tbody>
</table>

5.11 The officiating community is still split on how to apply this guideline. Some will argue that any breach of a class or equipment rule has an effect on performance and in a competitive race any effect is significant. How is a Jury to assess the effect on performance? Some juries expect the technical committee (measurers) to provide evidence on this, yet we are aware that a significant number of technical committees would expect this to be jury function. It is unrealistic to expect the competitor to admit any breach was performance enhancing.

5.12 The use of DPs also means sailors are not disqualified for what some consider minor or trivial breaches of the class rules. For example, if sail numbers are incorrectly applied but still visible and legible, or if a tow rope is 2 cm too short, should this result in a disqualification?

5.13 Having discussed the matter in the limited time available, the Group has considered four possible options:

(a) Option 1 – No change to the present practice but better training and guidance is provided to race officials

(b) Option 2 – Olympic Classes are required, in the class rules, to specify which rules can attract a DP and a suggested level.

(c) Option 3 – A presumption built into the rules that the sailor will be disqualified unless the sailor can show any breach was not performance enhancing.

(d) Option 4 – Discretionary penalties are not available for class rule or equipment rule breaches.

5.14 We do not consider that Option 1 will improve the situation – better training and guidance will only resolve issues about consistency within jury decisions but not the other issues identified.

5.15 We consider that Option 4 – removing all options for DPs – is an overreaction to the issue and will cause a return to the issues that caused DPs to be introduced in the first place.

5.16 Option 3 would have benefits and would have a similar strict liability approach as seen in anti-doping (where athletes are responsible unless they can prove contamination or no intention to cheat). However, it would not avoid the issue that performance enhancement is
For Consultation

a difficult concept to deal with consistently and would not avoid the issue currently faced by juries.

5.17 Therefore, we consider that Option 2 is the most appropriate way forward. It would require Olympic Classes to decide what features in the class rules should attract low, medium or high levels of sanction. This allows for class-specific approach and would mean that the Classes and their sailors are involved in deciding the appropriate approach in their class.

5.18 We also have noted the approach in some events where the rules of the event set standard penalties for different levels of equipment rule breaches. This would reduce inconsistency and mean there were clear expectations to sailors as to the penalty which will apply if equipment infringements are detected. The bands to be used should be narrower than the options presently available under the DP Policies.

**Recommendations**

_Jury Chairs and Technical Delegates of World Sailing Events and Olympic Class Worlds/Continents should file a meaningful report to World Sailing on the cases encountered at the event (in a format to be approved by the ECRG)_

_Olympic Class Rules should specify whether or not a standard penalty is available, and if so, the level of penalty that should be applied (with a limited number of bands)._

6. **Event technical committees**

6.1 Sailors participating in a WCS event or world championships are within the top sailors of the Class so higher level of rule knowledge is expected in regards to other championships.

6.2 Event technical committees (measurers/equipment inspectors) are currently dealing with administrative work during registration. Their skills and time could be put to better use and equipment registration done online as part of the overall registration dealt by local volunteers or staff. Instead of the day reserved for Day Zero, registration days should be used to allow sailors to use the event scales to check weights and make appropriate enquiries of the technical committee.

6.3 As recommended earlier in this paper, post-race equipment inspections including checks against manufacturing control methods for manufacturer-controlled classes should be carried out (not only checking event limitation marks).

6.4 In particular, the Group is concerned that manufacturer-controlled classes should be the most standard and yet they are not. Therefore, serious controls need to be implemented in order to detect if equipment has been modified or altered.

6.5 The new Olympic Classes Contract will allow the Technical Department to develop and assess quality controls for manufacturer control classes. In addition, equipment inspection at events can be used as part of these quality control schemes allowing using the resources, tooling and knowledge for event inspections.

6.6 We consider that a standard report should be implemented so that all World Cup Series and Olympic Class IMs report problems encountered and measures taken. These reports should be circulated to all Group 1 and Olympic Class IMs.

6.7 For the WCS, it should be technical committee policy that any breach is protested. This policy must be pursed systematically as at present there are too many different and subjective views on breaches. This is leading to IMs having their own ‘policy’. For example, PFDs are consistently not checked against the real weight of the sailors. This leads to sailors using smaller ones to increase their handling abilities. When a breach is found, the technical committees are not reacting to this as a rule breach.

6.8 To assist with enforcement of this policy, we consider that greater use of WS technical staff should be made and also to introduce the practice that at larger events IMs are cross-assigned to classes. Having a different-class IM undertaking equipment inspection, with the
For Consultation

class IM still available to consult, would improve the consistency and independence of the process whilst ensuring the appropriate expertise was available. It will also address the understandable difficulties that class IMs (who are very few in number) have when dealing with the same sailors over and over.

6.9 With respect to World and Continental Championships, we make the following observations:

(a) The current technical committees’ biggest concern is to pre-check all equipment since at these Championships it is possible to have sailors that are just starting in the class and have no real class rule experience.

(b) Implementing a Day Zero Policy is counter-beneficial due to limited class rule knowledge of good part of the fleet.

(c) Full or partial pre-event inspection of boats is a policy that most classes can pursue using the rankings to establish full or partial checks.

(d) Most manufacturer-controlled classes limit themselves to check for class stickers and do not pursue the need to check for alterations. This is inappropriate.

(e) Post-race checks need to be encouraged in some classes. In particular, manufacturer-controlled classes have a tendency not to follow up once racing starts or the check limits itself to event limitation stickers when more items should be considered.

(f) Standard report exists but it is not compulsory so this needs to be changed in the WS Race Officials Role Qualification and Competences document. Then they shall be circulated to all IM’s with Grouping 1.

Recommendation

Equipment inspection/technical committee policies and standard procedures for World Sailing Events and Olympic Class world and continental championships should be prepared and approved by World Sailing based on the above commentary. These should be prepared and kept under review by the World Sailing Technical Department and submitted for approval by the appropriate committees.

7. Investigation and Prosecution of Equipment Cheating

7.1 Having conducted the historic cases, the Group has been briefed on the proposals of the Governance Commission in respect of the investigation and prosecution of disciplinary cases (set out in Appendix 1 for convenience).

7.2 The only departure from the recommendation is that the Group considers that the investigation/decision to charge should not be solely carried out by legal qualified persons but also by those with experience of the sport (e.g. sailors, coaches, administrators, officials etc.). This is not made clear in the Commission’s proposal.

7.3 The Group considers that a more formalised group of EDIOs should be established in order to share knowledge and experience. The Group considers that EDIOs should, if time permits, consult with other designated persons remotely (such as the EDIO pool) before making their decision in order to ensure consistency of decision making.

7.4 The Group recommends that the names of WS DIOs should be published alongside any relevant report and that charging decisions of WS DIOs should be published. On these points, the Group requires further time to consult with the Judicial Board and Executive Office to ensure a proposal is legally compliant under data protection laws. Nevertheless, feedback is welcome on the proposal.

Recommendation

The Group supports the Governance Commission’s proposals, with the caveat that the Investigation Panel must include non-lawyers with sailing expertise.
For Consultation

A formal pool of EDIOs should be established and it should be best practice for an EDIO to consult the group prior to making a decision at an event.
The Group welcomes feedback on a proposal that the names and charging decisions (including a decision not to charge) are published by World Sailing.

8. Next Steps

8.1 The Group has conducted this work at the request of the Board in a relatively short period of time without having yet undertaken consultation with other committees, officials or stakeholders.

8.2 The Board has approved the Group's recommendations in principle, but subject to consultation and a further report from the Group following this.

8.3 This report is now published for consultation to all stakeholders (WS Classes, committees, commissions, race officials etc.). Feedback is welcomed on any aspect of it.

8.4 Feedback and comments should be sent to office@sailing.org by 9 August 2019.

8.5 After this time, the Group will make any amendments to its proposal and submit to the Board for approval (either by email or at a convenient meeting). This will include an action plan of how the report should be implemented.
Appendix 1 – Governance Commission Proposal

4.7.3 Investigations Panel

a. In addition, it is proposed to establish a new Investigations Panel whose role it is to receive complaints (including from the whistleblowing function), facilitate the resolution of them by agreement (where appropriate), investigate whether or not there is a breach of the Code of Ethics or any other applicable rule, and if so, to charge a person before the Disciplinary Tribunal.

b. Currently this function is undertaken by either World Sailing staff, a Disciplinary Investigating Officer for cases under the Judicial Board’s jurisdiction or the Ethics Commission, for cases under the Code of Ethics. However, greater separation and independence is required to ensure objectivity to the process and that the necessary skills and expertise are applied to this process. Staff may also be subject to the applicable rules against which the Investigations Panel has jurisdiction, so it is not appropriate that staff undertake investigations. Further, it is preferable that a hearing body which is deciding a case should not also be the one investigating it (as is currently the case).

c. It is proposed that the Investigations Panel comprise of a minimum of three people, one of whom shall be the Chairperson. They must be expert investigators and /or prosecutors familiar with sports organisations. They will be appointed by the same process as the members of the Disciplinary Tribunal. (See paragraph 4.7.4d below).

4.7.4 Disciplinary Tribunal

a. It is proposed to disestablish the existing Judicial Board and the Ethics Commission and replace them with a single hearing body called the Disciplinary Tribunal.

b. The role of the Disciplinary Tribunal will be to hear and decide all breaches of the revised Code of Ethics, or breaches of any rule or regulation, but excluding in-competition disputes. This will include the power for the Disciplinary Tribunal to recommend to the Board the removal of a director, including the President, for serious breach of duties.

c. The members of the Disciplinary Tribunal must be persons independent of World Sailing, meaning they cannot have had any role within World Sailing in the last five years. They must all be senior lawyers or persons with expertise in legal sporting disputes. It is proposed there will be a minimum of seven members including a Chairperson. The members should come from different parts of the world and be of both genders. For each case, the Chairperson shall appoint one member to hear and decide it, or three members for complex or important cases.

d. The members of the Disciplinary Tribunal will be appointed for 4-year terms of office, renewable for a maximum of 2 terms (8 years). They will be appointed by the AGM on the recommendation of the 2 independent members of the Nomination Panel but excluding the President and the Board Member. It is not considered appropriate for Board members to be involved in the appointment of these members, as the Board are World Sailing officials and subject to the Tribunal’s jurisdiction. The Disciplinary Tribunal will have its own secretariat, which is separate from World Sailing.

e. The Disciplinary Tribunal will report to the members at the AGM and will provide a summary of its work, each year.

f. The Disciplinary Tribunal will have appropriate powers to sanction those within its jurisdiction who breach the Code of Ethics or other applicable rules, including banning them from the sport.

g. Decisions of the Disciplinary Tribunal will be subject to a limited right of appeal to the Court of Arbitration for Sport. For example, for breach of natural justice or if the decision of the Disciplinary Tribunal was irrational or unreasonable.