

IN THE MATTER OF EIGHT APPEALS AGAINST THE SUSPENSION OF WORLD SAILING MEMBERS

Before:

Ian Hunt (Chair)
Erika Riedl
James Kitching

BETWEEN:

**MRS TATIANA ERMAKOVA, MRS YANA DOBZHITSKAYA, MRS NATALIA CHUBENKO,
MRS ANNA DEYANOVA, MR PAVEL SOBOLEV, MRS ANASTASIA MALETINA, MRS
NATALIA KURBATOVA LUEDERS, MRS POLINA GOLOVINA**

and

WORLD SAILING LIMITED

Appellants

Respondent

DECISION OF THE WORLD SAILING INDEPENDENT PANEL

INTRODUCTION

1. This is an appeal against the suspension of a Council member, and members of Relevant Bodies of World Sailing Limited (“World Sailing”, “the Respondent”), by World Sailing.

2. The Appellants are:
 - 2.1. Mrs Tatiana Ermakova.
 - 2.2. Mrs Yana Dobzhitskaya.
 - 2.3. Mrs Natalia Chubenko.
 - 2.4. Mrs Anna Deyanova.
 - 2.5. Mr Pavel Sobolev.
 - 2.6. Mrs Anastasia Maletina.
 - 2.7. Mrs Natalia Kurbatova Lueders.
 - 2.8. Mrs Polina Golovina.

collectively referred to as “the Appellants”.

BACKGROUND

3. On 1 March 2022 the Respondent issued a statement in which it confirmed that it would join with the International Olympic Committee (“IOC”) and various global sports organisations in taking steps to suspend the participation of Russian and Belarusian athletes and officials in World Sailing owned and sanctioned competition events.
4. On 18 April 2022, the Respondent issued a further statement in which it confirmed that its Board had agreed, at a meeting on 6 April 2022, to set in motion the various processes and approvals required from the stakeholders to enable, in extraordinary circumstances, the temporary suspension of the participation of members of committees, commissions, working parties, the Council and any other Relevant Bodies of World Sailing.
5. At a meeting on 17 May 2022, the Board of World Sailing agreed:
 - 5.1. To the text of two Written Special Resolutions, which proposed certain changes to World Sailing’s Articles of Association; and

5.2. To circulate the proposed Written Special Resolutions to all eligible Member National Authorities (MNAs) of the Respondent, and to those entitled to receive notice of a General Meeting in accordance with World Sailing's then current Articles of Association; and

5.3. To act upon such decisions as were returned by the Written Special Resolutions and those applying (if approved and adopted), in respect of the Respondent's new and amended Articles of Association.

6. The Written Special Resolutions then circulated by World Sailing, together with explanatory documentation, were as follows:

A. Member Written Special Resolution 1

The proposed adoption of a new Article 104 which, in summary, inserts a new Schedule D, which if incorporated, would provide for:

Part 1 of Schedule D

- *Members of the Federation at a General Meeting or by written resolution requiring a 75% majority of the votes cast to consider and apply a threshold to temporarily suspend one or more members of Council or the Election Committee.*
- *The threshold is set out at Appendix 1 to this note and labelled Threshold 1.*
- *If the members of the Federation determine Threshold 1 is met the affected individual shall be temporarily suspended meaning they have no privileges or rights in respect of Council or the Election Committee.*

Part 2 of Schedule D

- *Council at a Council Meeting or by written resolution requiring a 75% majority of the votes cast to consider and apply a threshold to temporarily suspend one or more members of "Relevant Bodies" including but not limited to committees, sub-committees, commissions and the Judicial Board.*
- *The threshold is set out at Appendix 1 to this note and labelled Threshold 2.*
- *If Council determines Threshold 2 is met the affected individual shall be temporarily suspended meaning they have no privileges or rights in respect of the Relevant Body.*

Note that under both Part 1 and Part 2 of Scheduled D:

- *The Board shall review any suspension at least every three months. If the Board determines that there has been a material change in the circumstances that gave rise to the suspension, the Board shall pass the matter back to the members of the Federation to determine.*
- *An affected individual may appeal in certain circumstances and the appeal will be heard by an Independent Panel appointed by the Judicial Board.*
- *Any suspension shall remain in force pending the Independent Panel's decision.*

B. Member Written Special Resolution 2

Provided that Member Written Special Resolution 1 is duly approved,

Member Written Special Resolution 2 provides the opportunity for the eligible MNAs of World Sailing to consider and apply Threshold 1 to determine whether to temporarily suspend any relevant member(s) of Council.

PART 3: COUNCIL WRITTEN RESOLUTION

The Member Written Special Resolutions were circulated by the Board on 18 May 2022. The Board shall have an outcome by 23 May 2022.

Provided that Member Written Special Resolution 1 is duly approved,

Member Written Special Resolution 2 provides the opportunity for Council members¹ of World Sailing to consider and apply Threshold 2 to determine whether to temporarily suspend any relevant member(s) of "Relevant Bodies".

Note that if the Member Written Special Resolution 1 is not duly approved, any votes cast in relation to the Council Written Resolution shall be disregarded and declared null and void.

7. Written Special Resolution 1 and Written Special Resolution 2 referred to a "threshold". Two such thresholds were identified, Threshold 1 and Threshold 2. The text of each threshold was as follows:

Threshold 1

- (a) *In order to take protective measures to preserve sporting integrity and ensure the safety of the Federation, its members and stakeholders, and the sport of sailing, a member of Council or the Election Committee may be temporarily suspended by a decision of a General Meeting or written resolution (which shall be valid and*

¹ Noting that the vote of conflicted Council members shall be disregarded under Article 102(b)(iii).

effective as if it had been passed at a duly convened General Meeting) passed as a Special Resolution (requiring a 75% majority of the votes cast) if:

- (i) the member of Council or the Election Committee is
 - (1) a national of;*
 - (2) a member of the Member National Authority of; or*
 - (3) affiliated to the Member National Authority of,**

a country or territory whose actions the eligible voting members of the Federation (such number of them as required to pass a Special Resolution) determine are contrary to the values or best interests of the Federation, its members or stakeholders, or the sport of sailing; and

- (ii) the eligible voting members of the Federation (such number of them as required to pass a Special Resolution) determine that it is no longer appropriate for that member to continue as a member of Council or the Election Committee because the actions of the country or territory in question are so objectionable that only the suspension of the member is sufficient to address the potential damage to the values, best interests or reputation of the Federation, its members or stakeholders, or the sport of sailing, that may be caused by the member's ongoing membership of Council or the Election Committee.*

Threshold 2

- (a) In order to take protective measures to preserve sporting integrity and ensure the safety of the Federation, its members and stakeholders, and the sport of sailing, Council may temporarily suspend one or more members of a committee, sub-committee, commission, working party, forum, Judicial Board or members of any Divisions and Sections (a "Relevant Body") by a decision of a Council Meeting or a written resolution (which shall be valid and effective as if it had been passed at a duly convened Council meeting) passed by a 75% majority of the votes cast:*

- (i) the member is
 - (1) a national of;*
 - (2) a member of the Member National Authority of; or*
 - (3) affiliated to the Member National Authority of,**

a country or territory whose actions Council determines (under the threshold set out at paragraph (a) above) are contrary to the values or best interests of the Federation, its members or stakeholders, or the sport of sailing; and

- (ii) Council determines (under the threshold set out at paragraph (a) above) that it is no longer appropriate for that member to continue as a member of the Relevant Body because the actions of the country or territory in question are so objectionable that only the suspension of the member is sufficient to address the potential damage to the values, best interests or*

reputation of the Federation, its members or stakeholders, or the sport of sailing, that may be caused by the member's ongoing membership of the Relevant Body.

8. As explained below, according to World Sailing, Written Special Resolution 1 and Written Special Resolution 2 were voted upon, in accordance with the provisions of the Articles of Association of World Sailing, on 23 May 2022. In each case the resolution was passed; 39 votes were cast in favour of each resolution; 10 votes were cast against each resolution; there were 4 abstentions; and 1 invalid vote.
9. In accordance with Written Special Resolution 1, as adopted, a further Special Resolution was proposed, namely the temporary suspension with immediate effect from Council, in accordance with Article 104 and Part 1 of Schedule D of the Articles of Association, of Mrs Tatiana Ermakova, a member of Council so designated, Mrs Ermakova being part of Group H of World Sailing.
10. In accordance with Written Special Resolution 2, a further Written Special Resolution of Council was proposed, namely that certain individuals be temporarily suspended with immediate effect from the Relevant Bodies of World Sailing, in accordance with Article 104 and Part 2 of Schedule D of the Articles of Association, those persons being Mrs Natalia Chubenko, Mrs Anna Deyanova, Mrs Yana Dobzhitskaya, Mrs Tatiana Ermakova, Mrs Polina Golovina, Mr Pavel Sobolev, Mrs Tatiana Kurbatova Lueders and Mrs Anastasia Maletina.
11. The designation of the individuals so named was as follows:

Name	Designation
<i>Mrs Natalia Chubenko</i>	<i>International Judges Sub-Committee, International Umpire Sub-Committee, Racing Rules Sub-Committee, Women's Forum</i>
<i>Mrs Anna Deyanova</i>	<i>International Race Officer, Women's Forum</i>
<i>Mrs Yana Dobzhitskaya</i>	<i>International Judges Sub-Committee, Women's Forum, Match Racing Sub-</i>

	<i>Committee, Events Appointment Working Party</i>
<i>Mrs Tatiana Ermakova</i>	<i>Women's Forum</i>
<i>Mrs Polina Golovina</i>	<i>Development & Regions Committee, Women's Forum</i>
<i>Mr Pavel Sobolev</i>	<i>Development & Regions Committee</i>
<i>Mrs Tatiana Kurbatova Lueders</i>	<i>Oceanic & Offshore Committee, Women's Forum</i>
<i>Mrs Anastasia Maletina</i>	<i>Youth Events Sub-Committee, Women's Forum</i>

PROCEDURAL HISTORY

12. On 29 May 2022 Dr Lorenz Walch submitted an appeal to the World Sailing Judicial Board against the suspension of Ms Ermakova and the “Committee/Body” members identified in paragraphs 10 and 11 above.
13. On 7 June 2022, Dr Walch submitted a further additional request to World Sailing, in which he sought to have World Sailing “confirm by means of a preliminary injunction², that Ms Tatiana Ermakova is still a member of the WS Race Official Committee and a member of the Questioning and Answering Panel (Chair)”, and that such confirmation be published on the World Sailing website.
14. On 23 June 2022, Onside Law, acting on behalf of World Sailing, submitted a Response to the grounds of appeal lodged by Dr Walch on 29 May 2022 and 7 June 2022 respectively.
15. On 4 July 2022, Dr Walch provided an additional submission on behalf of the Appellants.

² Emphasis in original.

16. On 6 July 2022 the appointment of the Independent Panel to determine the appeal was confirmed by Sport Resolutions, the Independent Panel being Ian Hunt (Chair), James Kitching, and Erika Riedl.

REGULATORY FRAMEWORK AND DIRECTIONS OF THE INDEPENDENT PANEL

17. The appeal is to be determined in accordance with the Judicial Board Rules of Procedure Appeals & Reviews of Other Decisions by World Sailing (Part G) ("the Rules"), which relevantly states:

1. INTRODUCTION

These Rules of Procedure apply to any appeal or review of any decision made under Part G of Regulation 35. They do not apply to disciplinary proceedings.

2. RIGHT OF APPEAL

- 2.1 *A party (the "Appellant") may appeal from a decision of World Sailing where the World Sailing Constitution or Regulations expressly permit such an appeal or review to be made to the Judicial Board ("the Board").*

3. NOTICE OF APPEAL

- 3.1 *The Appellant shall submit to the Chief Executive Officer, within the time limits specified in World Sailing Regulation 35.8.2, a notice of appeal containing or accompanied by:*

- (a) details, and where available a copy, of the decision appealed from;*
- (b) the Appellant's request for remedy;*
- (c) any request to stay the execution of the decision appealed from together with the reasons (if applicable); and*
- (d) a non-refundable deposit of One Hundred Euros (€100).*

(the "Notice of Appeal").

...

5. STATEMENT OF APPEAL

- 5.1 *Within ten (10) days of the submission of the Notice of Appeal the Appellant shall submit to the Registrar a statement of appeal containing or accompanied by:*

- (a) a statement of the facts and any rules, regulations or laws giving rise to the appeal and upon which the Appellant is relying;*
- (b) copies of all documents upon which the Appellant is relying;*
- (c) the names of any witnesses the Appellant wishes to call; and*

(d) *any proposals or statements concerning any procedural matters.*

(the "Statement of Appeal")

5.2 *The Registrar shall serve the Statement of Appeal on the Respondent. If the Registrar does not receive the Statement of Appeal by the required time limit, the appeal shall continue on the basis of the Notice of Appeal alone, subject to the discretion of the Independent Panel.*

6. REPLY

6.1 *Within twenty-eight (28) days of receipt by the Respondent of the Statement of Appeal, the Respondent shall submit to the Registrar (the "Reply"):*

(a) *confirmation or denial of all or part of the Notice and/or Statement of Appeal (setting out as fully as possible the facts and rules, regulations or laws that the Respondent believes applies), any other information upon which the Respondent relies;*

(b) *copies of all documents on which the Respondent wishes to rely unless the document has been previously submitted by the Appellant;*

(c) *the names of any witnesses the Respondent wishes to call; and*

(d) *any proposals or statements concerning any procedural matters.*

7. JURISDICTION

7.1 *The Independent Panel may decide on its own jurisdiction, including whether the Panel is properly constituted, what matters have been submitted to it and any objections with respect to the validity of the appeal.*

7.2 *An Independent Panel:*

(a) *is not be bound [sic] by any enactment or rule of law relating to the admissibility of evidence in proceedings before a court of law; and*

(b) *may draw such inference from the failure of a witness to give evidence or answer a question as it considers appropriate.*

7.3 *Once appointed, the Independent Panel will conduct all proceedings.*

.....

10. DIRECTIONS AND CONDUCT OF THE PROCEEDINGS

10.1 *The Independent Panel determines its own procedure and shall conduct the proceedings as it sees fit but at all times in a manner which:*

(a) *complies with the World Sailing Constitution, Regulations and these Rules;*

(b) *complies with its duty to act fairly and impartially;*

- (c) *allows the parties reasonable opportunity to put their respective cases and to deal with that of their opponent;*
- (d) *avoids unnecessary delay or expense; and*
- (e) *provides a fair and efficient means for resolving the dispute.*

10.2 *The Independent Panel may follow any procedure agreed by the parties if in the Panel's opinion it is reasonably practicable so to do.*

10.3 *With the consent of the parties, the Independent Panel may proceed in an expedited manner for which it shall issue appropriate directions.*

10.4 *If a party continues in the proceedings notwithstanding the fact that a provision of, or requirement under these Rules has not been complied with, that party shall have waived its right to object (unless it promptly states its objection).*

10.5 *The Independent Panel shall issue its decision in the proceedings within 3 months of the Notice of Appeal being delivered to it (unless this time is extended by the Board on application by the Independent Panel to it).*

11. HEARINGS

11.1 *Any party requesting a hearing has the right to be heard in front of the Independent Panel. In the absence of any such request, the Panel shall endeavour to reach a decision without a hearing on the basis of the written evidence. The format of the hearing is at the discretion of the Panel and may be by personal hearing or by audio- or video-conference.*

11.2 *The Independent Panel shall fix the date, time and place of any hearings and shall give the parties as much notice as practicable of the date, time and place of any hearing.*

11.3 *Any hearings shall be in private unless the parties agree otherwise or unless the Independent Panel directs.*

18. The relevant provisions of the Articles of Association state:

102. *The following provisions shall apply to decisions made by a General Meeting, a General Assembly, Council, any committee or sub-committee of Council, a commission, or a forum (including written or electronic decisions made between meetings):*

...

- (d) *Any Special Resolution, and any amendments to the Memorandum or Articles of Association, shall be made on a 75% majority of the votes cast*

- (e) *Unless Article 102(f) applies, voting shall be by show of hands or such other means, including electronic, that are approved by the chairman.*

...

10.4 *Notwithstanding any other Article or Regulation, the provisions of Schedule D shall apply and take precedence over any conflicting Article or Regulation.*

SCHEDULE D

PART 1

“TEMPORARY SUSPENSION OF MEMBERS OF COUNCIL AND THE ELECTION COMMITTEE

- (a) *In order to take protective measures to preserve sporting integrity and ensure the safety of the Federation, its members and stakeholders, and the sport of sailing, a member of Council or the Election Committee may be temporarily suspended by a decision of a General Meeting or written resolution (which shall be valid and effective as if it had been passed at a duly convened General Meeting) passed as a Special Resolution (requiring a 75% majority of the votes cast) if:*
- (i) *the member of Council or the Election Committee is*
 - (1) *a national of;*
 - (2) *a member of the Member National Authority of; or*
 - (3) *affiliated to the Member National Authority of,*

a country or territory whose actions the eligible voting members of the Federation (such number of them as required to pass a Special Resolution) determine are contrary to the values or best interests of the Federation, its members or stakeholders, or the sport of sailing; and
 - (ii) *the eligible voting members of the Federation (such number of them as required to pass a Special Resolution) determine that it is no longer appropriate for that member to continue as a member of Council or the Election Committee because the actions of the country or territory in question are so objectionable that only the suspension of the member is*

sufficient to address the potential damage to the values, best interests or reputation of the Federation, its members or stakeholders, or the sport of sailing, that may be caused by the member's ongoing membership of Council or the Election Committee.

- (b) The Board shall be authorised to act following the return of any decision taken in accordance with paragraph (a) above and promptly notify any affected member(s) of Council or the Election Committee of such decision and shall publish the decision of the eligible voting members on the Federation's website.*
- (c) The Board shall review any suspension at least every three months. If the Board determines that there has been a material change in circumstances giving rise to the suspension, the Board shall promptly notify any affected member and convene an Extraordinary General Meeting in accordance with Article 23 or use the written resolution procedure in accordance with Article 102(j) for the members of the Federation to reconsider any such suspension as a Special Resolution. The Board shall then promptly notify the decision of the Special Resolution at the General Meeting or written Special Resolution to any affected member and publish the decision of the General Meeting or written Special Resolution on the Federation's website.*
- (d) Whilst such a suspension is in force, no affected member of Council or the Election Committee has any privileges or rights in respect of Council or the Election Committee, nor may they participate in any proceedings of Council or the Election Committee. This includes, but is not limited to, attending meetings, receiving papers and communications, receiving minutes, counting for the purpose of quorum and voting, and appointing an alternate member.*
- (e) Any affected member of Council or the Election Committee may appeal against (i) a decision to suspend them in accordance with paragraph (a); or (ii) a decision to maintain their suspension in accordance with paragraph (c). The affected member of Council or the Election Committee shall submit their written grounds of appeal and any documents on which they rely to the Chief Executive Officer of the Federation within seven days of being notified of any such decision to suspend them or to maintain their suspension. The Board, acting on behalf of the Federation, shall then within seven days file its written response to the grounds of appeal and any documents on which it relies. The appeal will then be heard by*

an Independent Panel appointed by the Judicial Board in accordance with the Regulations. Any suspension shall remain in force pending the Independent Panel's decision.

PART 2

TEMPORARY SUSPENSION OF MEMBERS OF COMMITTEES, SUB-COMMITTEES AND OTHER BODIES OF THE FEDERATION

...

- (e) *Any affected member of a Relevant Body may appeal against (i) a decision to suspend them in accordance with paragraph (a); or (ii) a decision to maintain their suspension in accordance with paragraph (c). The affected member of a Relevant Body shall submit their written grounds of appeal and any documents on which they rely to the Chief Executive Officer of the Federation within seven days of being notified of any such decision to suspend them or to maintain their suspension. The Board, acting on behalf of the Federation, shall then within seven days file its written response to the grounds of appeal and any documents on which it relies. The appeal will then be heard by an Independent Panel appointed by the Judicial Board in accordance with the Regulations. Any suspension shall remain in force pending the Independent Panel's decision.*

19. No request was made by either party, in accordance with clause 11 of the Rules for a hearing in front of the Independent Panel.
20. Having considered the Notice of Appeal, the statement of appeal, and the reply, the Independent Panel issued a direction on 18 July 2022, indicating that it would make its decision based on the written documents and submissions filed by both parties, save for a request that the voting record for the Council Written Special Resolution referred to in footnote 2 of the letter from Onside Law dated 23 June 2022, be disclosed.
21. The Independent Panel also advised the parties that if any further direction was sought, such was to be notified by 5pm CEST Wednesday 20 July 2022.

22. No such further direction was sought.
23. On 19 July 2022 the voting record of the Council Written Special Resolution was provided to the Independent Panel.
24. On 22 July 2022, the Minutes of Board Meetings of World Sailing on 6 April, 17 May and 28 May 2022 were provided.

EVIDENCE AND SUBMISSIONS OF THE APPELLANTS

25. In his Notice of Appeal dated 29 May 2022, Dr Walch:
 - 25.1. Attached a “proxy” in respect of all eight Appellants, confirming his authority to represent each of them in the appeal;
 - 25.2. Requested the annulment of the suspension of all Appellants;
 - 25.3. Requested, in respect of Mrs Natalia Chubenko, the annulment of her suspension for three months from the International Judges Sub-Committee;
 - 25.4. Requested, in respect of Mrs Anna Deyanova, annulment of her suspension for three months as an International Race Officer;
 - 25.5. Requested, in favour of all Appellants, “to set provisional out [sic] of execution the alleged suspension of all Appellants until to a final decision [sic] of the WS Judicial Board”.
26. Grounds for relief sought were then set out. In this respect, Dr Walch submitted:
 - 26.1. The suspension of the Appellants did not “fulfill [sic] all the necessary requirements under the Written Special Resolution 1”.
 - 26.2. The Appellants had not been notified properly about the suspension as World Sailing Council or World Sailing Relevant Body members.
 - 26.3. The voting papers in respect of the suspension of the Appellants did not indicate why and in which way the Appellants fulfilled the general requirements of Written Special Resolution 1.

- 26.4. The suspension of Mrs Natalia Chubenko as a member of the International Judges Sub-Committee did not comply with Written Special Resolution 1.
- 26.5. The suspension of Mrs Anna Deyanova as International Race Officer did not comply with Written Special Resolution 1.
- 26.6. Temporary suspension of the “alleged suspension of all up (sic) mentioned Appellants until to a final decision that the WS Judicial Board” was sought.
- 26.7. By his further submission dated 7 June 2022, which the Independent Panel treats as a request to amend the originally submitted grounds in the Notice of Appeal of 29 May 2022, Dr Walch requested, in respect of Mrs Tatiana Ermakova, by means of a preliminary injunction, that she be confirmed as being “still a member of the WS Race Official Committee” and a member of the Questioning and Answering Panel (Chair), and that such confirmation be published on the World Sailing website.
- 26.8. In his submission of 4 July 2022, Dr Walch – in addition – submitted that (i) there were unreasonable delays in the appeal procedure by World Sailing; (ii) the votes on the Written Special Resolution 1, Written Special Resolution 2 and the Written Council Resolution were invalid and also infringed “superior right”; and that (iii) the voting form on the Written Special Resolution 2 and the Written Council Resolution were not sufficient to vote on them.
27. In support of these grounds of appeal, Dr Walch submitted, summarised at paragraphs 26.1 - 26.2 above, that the Appellants had not been promptly notified of any decision made in accordance with Schedule D Part 1 or Schedule D Part 2, in respect of the temporary suspension of members of Council, or members of Committees.
28. Dr Walch further submitted that only following such notification, and the steps he contended were required of the Council of World Sailing in terms of notification, could any such suspension become effective.
29. Dr Walch submitted that none of the Appellants had been notified of their suspension by either the Board or Council of World Sailing and that only through other persons had they become aware of their respective suspensions.

30. As a result, Dr Walch submitted that because the proper process for the suspension of the Appellants had not been observed, each retained their original functions, rights and obligations as members of Council or Relevant Bodies.
31. Dr Walch further contended that, in terms of the Written Special Resolutions, Part 1(e) and Part 2(e), written grounds of appeal were to be submitted by affected members of the Council or Relevant Body, within 7 days of their notification of any decision to suspend them. Thus, since according to Dr Walch notification of suspension had not been notified to the Appellants by either the Board or Council, the 7 day period for appeal had “not even started”.
32. Dr Walch further submitted that, in terms of the ground summarised at paragraph 26.3 above, the voting papers in respect of the suspension of the Appellants did not indicate why and in which way they fulfilled the general requirements of Written Special Resolution 1. In this respect, Dr Walch contended that this resolution was “*only a general rule for suspension of WS members which may be applied and executed for special cases if certain facts are established*”.
33. Dr Walch also contended that “*certain facts*” were only generally described in Written Special Resolution 1; he contended that there was no sufficient detail in either Written Special Resolution 2, the written Council resolution of World Sailing Limited and the explanatory note which members of the Council had received so as to enable electronic voting, of the details that are described in the framework rule, namely Written Special Resolution 1.
34. Dr Walch complained that there had been no sufficient explanation, as he said was required by Written Special Resolution 1, of:
- 34.1. The nationality the suspended members have;
- 34.2. Why actions by their country were contrary to the values of the Federation;

34.3. Why these actions were so objectionable that only temporary suspension of the members was sufficient to address the potential damage to the values of the Federation;

34.4. Why the temporarily suspension [sic] of the members were necessary to take particular measures to preserve sporting integrity and to ensure the safety of the Federation.

35. Dr Walch continued:

“The members of Council who vote on the Written Special Resolution 1+2 and on the Written Council Resolution of WS Ltd cannot see from the voting papers for which actions of the country of the Appellants are blamed for.

This remains completely up to the own imagination and fantasy of the votes, although the voting papers (Written Special Resolution 2 and Written Council Resolution of WS Ltd) refer explicitly to the Written Special Resolution 1, which gives only the general frame for a temporarily suspension and which shall be filled out by facts in a special case.”

36. For these, and other reasons, Dr Walch submitted that the voting in respect of Written Special Resolution 2 and Written Council Resolution of WS Ltd was incomplete, missing the most important details, and that “*a vote on this paper is invalid*”, so, Dr Walch contended, the suspension of the Appellants could not be justified, could not be upheld, and should be annulled.

37. In respect of the ground summarised at paragraph 26.4 above, Dr Walch submitted that because Mrs Chubenko was not a member of the International Judges Sub-Committee and had never been a member of that Sub-Committee, she should not be suspended from it. The suspension should therefore be annulled.

38. In respect of the ground summarised at paragraph 26.5 above, Dr Walch submitted that the suspension of Mrs Anna Deyanova as an International Race Officer and a member of the Women’s Forum could not stand because Written Special Resolution 1 only allowed the suspension of members of Council, Election Committee, members of Committees and members of any Divisions and Sections – a Relevant Body, in terms of the World Sailing Rules.

39. Dr Walch submitted that an International Race Officer was not a member of such a Relevant Body; rather, the appointment of a person was by way of personal certification, not as a member of any Committee or Relevant Body; thus, Mrs Deyanova could only be suspended under World Sailing Regulation 35, not pursuant to Written Special Resolution 1. Accordingly, Mrs Deyanova's suspension as an International Race Officer could not be upheld and should be annulled.
40. With respect to the submissions regarding votes being invalid, Dr Walch, argued that to his knowledge World Sailing has 146 registered members, of which 135 MNAs had voting rights. However, only 54 MNAs made use of their voting rights. Since in his view, the Written Special Resolution 1 affected the "Aims of World Sailing", namely the national and political neutrality of World Sailing, voting in respect of these issues required a 75% majority of all members, not simply a 75% majority of votes cast.

EVIDENCE AND SUBMISSIONS OF THE RESPONDENT

41. The response of World Sailing was set out in Onside Law's letter to Dr Walch dated 23 June 2022. The response addressed the points raised, the various matters and grounds of appeal raised by Dr Walch in the Notice of Appeal dated 29 May 2022, and the subsequent letter of 7 June 2022.
42. Through Onside Law, World Sailing:
- 42.1. Rejected the assertion of unreasonable delay, referring to an earlier response provided to Dr Walch on 14 June 2022.
- Noted that Dr Walch had contested whether effective notification of the suspensions had taken place, notwithstanding that he had been instructed to appeal on behalf of all Appellants, and had provided the Grounds of Appeal, on time.
- 42.2. Noted that Dr Walch contended that the Appellants' temporary suspension from various bodies of the Respondent involved serious infringement of, and severe interference with, the Appellants' membership rights but that Dr Walch had not explained what the rights

were, and how they had been breached. World Sailing submitted that there is “no fundamental human right to sit on a committee or board position”.

42.3. Submitted that the alleged damage to the Appellants, which Dr Walch had submitted was “bigger than the damage to WS”, had neither been identified nor particularised.

43. As to specific grounds of appeal, Onside Law’s submissions were:

43.1. That there was no longer an issue with respect to notification of the Appellants, of World Sailing’s suspension of them as set out in World Sailing’s response of 14 June 2022.³

43.2. That as to the ground that insufficient information had been provided on the voting form (as referred to in paragraph 26.3 above), that MNAs and members voting on the Written Special Resolutions would have understood precisely what actions of Russia and Belarus were contrary to the values of World Sailing and why such actions were so objectionable that temporary suspension of the relevant members, namely the Appellants, was required.

Further, in response to the submission of Dr Walch that voting parties might apply to their vote “their own imagination and fantasy on which precise actions the country of the Appellants has to be blamed for”, such a submission was implausible and misconceived.

43.3. As to the grounds summarised at paragraphs 26.4 and 26.5 above – incorrect designations in respect of Mrs Natalia Chubenko and Mrs Anna Deyanova:⁴

(a) World Sailing accepted that Mrs Chubenko was not a member of the International Judges Sub-Committee – and thus was not and could not have been suspended

³ World Sailing’s position as advanced in its letter dated 14 June 2022 was that the Appellants were notified of their temporary suspensions on 23 May 2022: by email to all MNAs, including the Russian Yachting Federation of which Mrs Ermakova is a Council member; to all Council members including Mrs Ermakova representing Group H which includes the Russian Yachting Federation, and representatives of Group C, which included the Belarus Sailing Union, notifying them that the Council Written Resolutions had been passed; that the CEO of World Sailing, Mr David Graham, had personally informed Mrs Ermakova and Mrs Dobzhitskaya on 26 May 2022 of their temporary suspensions; that World Sailing had also published the temporary suspensions in a press release issued on its website on 25 May 2022; and that the proxy documents attached to Dr Walch’s Notice of Appeal dated 29 May 2022, variously signed by the Appellants on dates ranging from 24 – 27 May, and the fact that the Notice of Appeal was lodged before the deadline for appeal, was a sufficient indication of the Appellants’ awareness of their temporary suspension. Further, World Sailing simultaneously advised that without prejudice to its position as recorded above, the letter of 14 June 2022 was to be treated as further written notification to the Appellant’s, on behalf of the Board and Council, of their temporary suspension from the bodies “expressly set out against their names at Schedule 1 to this letter”.

⁴ As referred to in paragraphs 26.4 and 26.5 above.

by the Respondent. World Sailing maintained that no detriment had been suffered by Mrs Chubenko as a result of what it described as a “clerical error”.

- (b) In respect of Mrs Deyanova, World Sailing accepted that a further clerical error had led to the suspension of Mrs Deyanova as an International Race Officer (“IRO”), and that as a result no suspension of her “should exist in respect of her role as an IRO”. Once again, the Respondent asserted that it did not consider Mrs Deyanova had suffered any detriment in respect of the temporary suspension.

43.4. In respect of the ground in the Notice of Appeal that the suspension of the Appellants was neither necessary nor proportionate, Onside Law submitted:

- (a) That the Articles of Association were explicit as to why the measures taken by the Respondent were necessary, namely “to preserve sporting integrity and ensure the safety of the Federation, its members and stakeholders”;
- (b) Pointed out that such a stance was consistent with that taken by the IOC in respect of bans imposed on Russian and Belarusian athletes;
- (c) Explained that after extensive consideration of matters, the Board of the Respondent had felt it necessary to put the proposed decisions to the wider World Sailing community, as identified in various Board minutes;
- (d) Noted that World Sailing was acutely aware that the integrity of the sport, and the running of competitions, was at risk, for reasons identified in the submission;
- (e) Asserted that Dr Walch had “fundamentally misunderstood” the rationale for the introduction of the temporary suspensions, and rejected the claim that “damage to the Appellant[s] is bigger than the “damage” to WS”;
- (f) Noted that 80% of votes cast had been in favour of both Written Special Resolutions;
- (g) Finally, submitted that World Sailing had sought to achieve a level of proportionality, by means of the requirement that suspensions be reviewed every three months, which had been fully explained within the explanatory notes accompanying the voting forms provided to members.

43.5. As to Dr Walch's letter dated 7 June 2022, Onside Law responded in respect of the asserted incorrect extension of suspension of Mrs Tatiana Ermakova to further World Sailing positions.

- (a) In this respect Onside Law was responding to Dr Walch's submission that the extension of suspensions to Mrs Ermakova's roles as a member and chair of the Questioning & Answering Panel ("Q&A Panel"), and as a member of the Race Official Committee ("ROC"), were ineffective given that those roles and those entities had not been mentioned in the Designation of the Council Written Resolution, and, instead, the Council had only voted on Mrs Ermakova's suspension from the Women's Forum.
- (b) Onside Law submitted that it was "implied that any suspensions of Russian or Belarusian individuals would and should apply to any positions held as members of Council, Election Committees and as members of a committee, sub-committee, commission, working party, forum, Judicial Board or members of any Divisions and Sections";
- (c) It was also submitted that the relevant provisions of the Articles of Association, were drafted widely to encompass all such roles and that "Whilst not expressly listed on the voting forms, it was anticipated that suspensions in respect of Mrs Ermakova would cover all her positions, including being a member of the ROC and the Q&A Panel".
- (d) Alternatively, it was submitted that, had World Sailing explicitly listed those roles on the relevant voting form, the same conclusions would nevertheless be reached, namely that "Mrs Ermakova would be suspended from those functions as well. Where the counter-factual leads us to the same conclusion, we do not consider that there are any reasonable grounds for your client to put forward a challenge to this position".⁵

44. In concluding remarks, Onside Law submitted that the Appellants' Grounds of Appeal were "*almost exclusively based on what you seek to argue are procedural*

⁵ World Sailing also noted that given the inherent overlap between the points raised by Dr Walch's letter of 7 June, with the Grounds of Appeal dated 29 May 2022, it had no objection to the issue being raised with respect to Mrs Ermakova being dealt with simultaneously as issues raised by the Notice of Appeal dated 29 May 2022.

irregularities. WS firmly maintains that proper process has been followed and there are no grounds which you have cited which should annul the suspensions (save for our comments in respect of ground 3)⁶ and/or invalidate the votes”.

45. It was contended that even if each procedural issue identified by Dr Walch had been addressed in what Dr Walch contended was the correct way, the outcome would nevertheless have been exactly the same, with the voters still having overwhelmingly voted in favour of the suspensions, and with the outcome that the Appellants’ position would be identical to that effected by the passage of the Written Special Resolution.
46. Onside Law also submitted that no particulars of any rights allegedly breached by the Written Special Resolutions had been provided and, to the extent that any argument had been advanced on this point, it was “*hard to see what loss or detriment [the Appellants] would be claiming for in any event*”. This because the positions held by the Appellants were not salaried, and their participation in their respective committees not determinative in circumstances where other participants could continue with the relevant projects and in some circumstances, where it was possible to replace committee members.
47. It was contended that there had been no prejudice to the Appellants, material or otherwise, and that even if they had not been temporarily suspended and been permitted to participate in the relevant votes at, for example the Mid-Year Meeting and subsequently their votes had been included, this would not have made any difference to the outcome of those matters.
48. Onside Law referred to exhibits demonstrating the above point, appending the voting records of the Mid-Year Meeting.

⁶ Namely, the concession that the suspension of Mrs Chubenko as a member of the International Judges Sub-Committee, and of Mrs Deyanova as an International Race Officer.

49. Thus, Onside Law submitted that the counter-factual position led to the same conclusion, and that there were no substantive grounds on which the Appellants could claim to have suffered any damage. The Appellants were invited to withdraw the remaining Grounds of Appeal, in order to avoid wasted time and costs.

ANALYSIS

50. For reasons which can be stated comparatively shortly, the Independent Panel does not, with three specific exceptions as noted below, uphold the appeal.

51. In summary, it considers the responses of World Sailing through Onside Law, to answer all points raised by Dr Walch on behalf of the Appellants; it also considers that most of the arguments and Grounds of Appeal advanced lack merit.

52. As a threshold matter, the Independent Panel holds that: (i) all procedural timelines and requirements in the Rules (as described at paragraph 17 above) have been complied with; and (ii) it has jurisdiction to adjudicate this matter pursuant to clause 7.1 of the Rules.

53. The Independent Panel notes that it is not called upon, nor does it consider it appropriate, to comment upon the appropriateness of the steps taken by the Respondent, as a result of the conflict between Russia and Ukraine, nor to consider, let alone determine, issues such as whether the actions of Russia and Belarus were contrary to the values of World Sailing, or why those actions were considered so objectionable that only suspension of members of World Sailing was sufficient to address potential damage to those values.

54. The Independent Panel accepts that decisions of that kind were for World Sailing to make, provided that it acted, in taking the steps that it did, within the powers granted to it under the Articles of Association of World Sailing and, to the extent that any exercise of a discretion was entailed, that World Sailing acted within the scope of that discretion.

55. That analysis extends, of course, to consideration of the Articles of Association of World Sailing, Written Special Resolutions 1 and 2 as adopted by it, and the setting, within the

context of those Written Special Resolutions, of thresholds which might permit the making of further decisions which had the effect of suspending the Appellants from their respective roles within the Respondent.

56. In this context, the Independent Panel wishes to clarify that the Articles of the Association of World Sailing do not require for a minimum participation in voting. Pursuant to Article 102 (e) and (f) of the Articles of the Constitution, any amendments to the Memorandum of the Articles of the Association, as was the case in the present case, shall be made on a 75% majority of votes cast, and electronic voting is provided for in the Articles of the Association. As a result, contrary to the allegations of Dr Walch, the votes must be considered as valid.
57. As to challenges based on asserted lack of proper notification of the decisions, the Independent Panel concludes that, in fact, notification of the decisions was properly effected by World Sailing and that all Appellants were aware of their suspension. The fact that the Appellants had engaged Dr Walch to act on their behalf and provided authority for him to file the appeals on their behalf, in a timely way, is an indication that this ground is technical, and without substantive merit.
58. The Independent Panel noted that while it might be preferable if members of World Sailing bodies and/or Council members were personally notified of decisions, that is not obliged by the Articles of Association nor is it, it appears, the means of communication that World Sailing and its MNAs routinely use.
59. In short, the Independent Panel has no doubt whatsoever that all Appellants were properly notified of the suspension decision.
60. Nor does the Independent Panel consider that there was any failure to explain, sufficiently and clearly, to those voting on the Written Special Resolutions, the purpose of their adoption and their implications.
61. Nor does the Independent Panel consider that any of the Appellants have shown any particular right – and certainly no human right – which, had the Written Special Resolutions in any way been invalid, might have been infringed.

62. As to what was described as a ground based on insufficient information having been provided on the voting forms, to the extent that that ground has not already been addressed above, the Independent Panel agrees with World Sailing that it is implausible to think that members voting on the Written Special Resolutions were not fully aware of the rationale for the proposed amendments to the Articles of Association, and the implications of the adoption of those amendments and the relevant thresholds.
63. Specifically, the Independent Panel accepts that it would have been clearly evident to those voting that they were being invited to do so in the context of the conflict occasioned by the invasion of Ukraine by Russia and that the actions of both Russia and Belarus were, in the view of World Sailing, “so objectionable and potentially prejudicial to the values, best interests and/or reputation of World Sailing that temporary suspension of those countries’ representatives was warranted”. As World Sailing submitted, the conclusive votes in the favour of the Resolutions and suspensions are proof that those so voting considered the Resolutions appropriate in the circumstances.
64. Ground 3 is dealt with below.
65. As to Ground 4, the contention that the suspension was neither necessary or appropriate, the Independent Panel accepts the submissions on behalf of World Sailing, and notes the limitations in its role, as set out above.
66. For completeness, the Independent Panel confirms that it does not consider that in any respect, in particular the steps taken by World Sailing, including the amendments to the Articles of Association and subsequent decisions to suspend the Appellants, were *ultra vires* the powers of World Sailing. And, to the extent that issues of proportionality arise for consideration – it is arguable that they do not – the Independent Panel notes the measure adopted to ensure that a level of proportionality was built into the suspensions, namely the requirement that they be reviewed on a three-monthly basis.
67. Two of the exceptions noted above concern the suspension of Mrs Chubenko as a member of the International Judges Sub-Committee, and the suspension of Mrs Anna Deyanova, as an International Race Officer.

68. In respect of Mrs Chubenko, as noted above at paragraph 42.3(a), World Sailing through Onside Law's submissions accepted that Mrs Chubenko was not a member of the International Judges Sub-Committee, and thus she could not have been suspended by the Respondent.
69. To the extent, therefore, that a Resolution had been passed by World Sailing which purported to suspend Mrs Chubenko as a member of a Committee of which she had never been a member, it was, from the outset, a nullity. Or, as Dr Walch contended, such suspension should be annulled.
70. Either way, the appeal succeeds insofar as the Independent Panel concludes that the purported suspension of Mrs Chubenko as a member of the International Judges Sub-Committee cannot stand.
71. In respect of Mrs Deyanova, World Sailing has accepted, through the submissions of Onside Law, that it was a clerical error that had led to the suspension of Mrs Deyanova as an IRO and that, as a result, no suspension of her should exist in respect of that role.
72. To the extent therefore that World Sailing purported to suspend Mrs Deyanova from that role, the appeal is upheld.
73. There is the further issue to be addressed concerning Mrs Ermakova, namely her suspension as a member of the Q&A Panel, and as a member of the ROC.
74. Here, Onside Law had submitted that the suspension of any Russian or Belarusian individual should be regarded as applying to any position that any person might hold, whether identified in the relevant Resolutions or not.
75. As noted, Onside Law's submission was that the relevant Articles of Association had been drafted so as to encompass all roles that might be held by any Russian or Belarusian individual and that "*whilst not expressly listed on the voting forms, it was anticipated that suspension in respect of Mrs Ermakova would cover all her positions, including being a member of the ROC and the Q&A Panel*".

76. It also submitted that had those roles been listed explicitly on the relevant voting forms, the same voting would have occurred, meaning that Mrs Ermakova would have been suspended from those roles.
77. The Independent Panel does not consider that it is its role to rectify any error or oversight in the form of the Resolution that was presented to, and passed by, the members voting upon that Resolution.
78. It may well be the case that, had Mrs Ermakova's roles as a member of the ROC and Q&A Panel been identified, the vote would have been exactly the same – indeed, that outcome is almost certain to have occurred.
79. However, it is clear that World Sailing sought to proceed, as it did, firstly by amending the Articles of Association and then by presenting specific Resolutions, in a manner that, formally, addressed the requirements of the Articles of Association themselves, and the role of Mrs Ermakova as a member of any Committees or other entities within World Sailing.
80. The Independent Panel does not consider it appropriate to approach the matter on the basis that, against the background of the precise steps taken by World Sailing, it should endorse or confirm the suspension of an individual on the basis of implication, or inevitability, or rewrite the wording of the Resolutions that were voted upon.
81. In short – because of those precise steps - if World Sailing wished to suspend Mrs Ermakova from those particular roles, it should have identified them in the voting material. It failed to do so.
82. The result is that the appeal is upheld in respect of the challenge to Mrs Ermakova's suspension from roles as a member of the ROC and the Q&A Panel.

CONCLUSION

83. For the reasons set out above the Independent Panel:
- 83.1. Dismisses the appeals of Mrs Tatiana Ermakova (save as set out at paragraph 83.2 below), Mrs Yana Dobzhitskaya, Mrs Natalia Chubenko (save as set out at paragraph 83.3 below), Mrs Anna Deyanova (save as set out at paragraph 83.4

below), Mr Pavel Sobolev, Mrs Anastasia Maletina, Mrs Natalia Kurbatova Lueders, and Mrs Polina Golovina.

83.2. Upholds the appeal of Mrs Tatiana Ermakova against her suspension as a member of the World Sailing Q&A Panel, and the ROC.

83.3. Upholds the appeal of Mrs Natalia Chubenko against her purported suspension as member of the International Judges Sub-Committee.

83.4. Upholds the appeal of Mrs Anna Deyanova against her purported suspension as an IRO.

83.5. Any and all other requests are dismissed.

COSTS

84. In accordance with Clause 14.1 of Part G, the costs of the Independent Panel shall be borne by World Sailing and the parties shall be responsible for their own legal and other costs.



Ian Hunt (Chair)

12 August 2022

On Behalf of the World Sailing Independent Panel