



Regulation 5 Complaint

Chris Fegan v Mike Truran

Regulation 5

1. Regulation 5 establishes a complaints procedure for the handling of complaints concerning the ECF and its officials.
2. A complaint has been made by Chris Fegan (CF), ECF Women's Director, against Mike Truran (MT), ECF Chief Executive. A panel consisting of Julian Clissold (JC), Stephen Woodhouse (SVW) and Mike Gunn (MG) has been appointed to consider the complaint. This report reflects the findings and conclusions of the Panel.

Objections to the Panel

3. CF has objected to the inclusion of SVW on the Panel. He was asked to justify his objections on three occasions. Initially, no justification was provided. Following the third request, CF stated his objection as relating to the "public part Stephen is playing in Mike's re-election campaign". He explained that this related to SVW's inclusion in an email from MT as a person who Council members could appoint as their proxy at the AGM. CF extrapolated from this that SVW was working with and supporting MT in his election campaign.
4. In fact, SVW has not been and has stated that he will not be part of MT's campaign. He had not been aware that MT had included his details to receive proxy votes until after the email in question was sent but that such an appointment was administrative to allow votes to be cast by Council members whether in favour of MT or otherwise.
5. Further, prior to appointing the Panel, JC discussed this with SVW. JC found no evidence of public involvement in any election campaign by SVW. SVW confirmed that he had discussed matters relating to the expected contested election for CEO with both MT and Malcolm Pein. The matters discussed are confidential but SVW confirmed that they do not amount to campaigning and that he had made clear to both candidates that he would not be prepared to act for either of them otherwise than as an NED seeking to secure an efficiently operating Board.
6. As a result, JC determined that SVW's participation on the Panel was appropriate.

Conditions for Complaint

7. The starting point is to consider whether the conditions for bringing a complaint have been satisfied.
 - (i) For a complaint to be brought, there should be an "alleged case of serious maladministration" (paragraph 1.2). The complaint was raised by way of an email sent

to JC on 30th August 2021 which is included in paragraph 4 of this report which alleges serious maladministration satisfying the gateway requirement in paragraph 1.2.

- (ii) CF has paid the £50 fee required by paragraph 1.3. Payment was made on 3rd September 2021.
- (iii) The complaint has two components. The first relates to an email from MT sent on 4th August while the second concerns an alleged and ongoing failure of communication. While the email raising the complaint fell within four weeks of the MT email complained about, the required fee was not paid within the four week time limit required by paragraph 1.4 and as such falls outside the jurisdiction of Regulation 5. The Panel has nevertheless considered whether the complaint would have been upheld if brought within time.
- (iv) This gave rise to a question as to whether the complaint should be heard at all.

The Panel determined that:

- (a) The complaint in respect of the email of 4th August was out of time but as the allegation of a failure to communicate is ongoing, that limb of the complaint is validly made.**
- (b) Although the second limb of the complaint is out of time, the Panel would nevertheless consider whether it would have been successful if brought within time.**

- (v) CF has not specified any remedy and has provided no evidence that a “direct route for the resolution of the matter has been attempted” as specified in Paragraph 2.1.

The Panel determined that:

- (a) In the absence of any such attempt at resolution, the Panel would be justified in declining to hear the complaint.**
- (b) There was nevertheless discretion for the Panel to hear the complaint.**
- (c) The Panel would exercise its discretion and allow the complaint to proceed.**

Complaint

- 8. The complaint was submitted to JC from CF by way of email sent on 30th August 2021. The content of the complaint is that:

"Mr Truran wrote an email on 4th August 2021, which he copied to all members of the ECF Board in which he discussed my performance as Director of Women's Chess.

This is a clear breach of Regulation 4-Standards of Conduct for ECF Officials and specifically the following sections:

- 2.1
- 2.2
- 2.3
- 3.1
- 3.2

Mr Truran's comments are designed to denigrate my record as Director of Women's Chess to Board colleagues and constitute a direct case of serious maladministration by him.

Mr Truran has never previously expressed any concerns about my performance to me and indeed he has not spoken to me (outside of interaction at Board meetings) for almost 2 years which is clearly serious maladministration on the part of the ECF Chief Executive and contrary to his responsibilities under Regulation 2.

Preliminary Observations

9. There are a number of preliminary points to be clarified with regard to this complaint:
- (i) Regulation 4 sets out a behavioural code. A formal complaint would be made under Regulation 5.
 - (ii) As recognised by CF, in order for a Regulation 5 complaint to be heard, there has to be an "alleged case of serious maladministration".
 - (iii) It follows that the question for the Panel is whether, on the facts as established, MT has been guilty of serious maladministration.

Summary of Facts

10. The facts are simple, given that the complaint focuses on two matters.

MT Email of 4th August 2021

This email addressed wider matters and CF was not only not the main subject of the article, but there are only two sentences which pertain to him. They are both set out below. The first sentence is a comment on CF by another director while the second sentence, shown in red, is MT's response which CF is complaining about.

Chris has achieved everything he set out to do. Women's chess has a larger budget, there is more activity in women's chess, they have a social media account and his election promise to replace himself with a woman is being fulfilled. Let's just say that [name of other director] and I have very different views on Chris' contribution to women's chess on behalf of the ECF while in office.

Lack of Communication

11. A preliminary point is that CF alleges that MT did not speak to him outside Board meetings for almost two years.
12. It is not accurate to assert that MT did not speak to CF for almost two years. There was a meeting on 16th January 2020 held between MT and CF at MT's initiative to discuss Board matters. Further, considering wider communications, JC and SVW have been privy to email exchanges involving CF and MT during that period relating to various matters pertaining the Women's Chess (e.g. the response of the ECF to the Queen's Gambit film) and wider board matters.
13. The Panel is therefore construing CF's complaint to be that MT's communication was insufficient in the context of concerns about CF's performance as Director of Women's Chess.

Regulation 4

14. It has already been noted that the complaint can only be upheld if this results in serious maladministration contrary to Regulation 5.
15. Although Regulation 4 makes provision for imposing various sanctions (Paragraph 2.4), there is a requirement under Regulation 5 for disputes to be resolved by direct communication, failing which the Regulation 5 procedure is followed.
16. The Panel has nevertheless reviewed Regulation 4. The findings in relation to Regulation 4 relate exclusively to the email of 4th August as the Panel does not see that a failure of communication could fall within any of the Regulation 4 provisions. As such, that is only considered under Regulation 5 as an allegation of serious maladministration.
17. The main provisions to be considered would be Paragraphs 2.1 and 3.1.
18. Paragraph 3.1 stipulates that "Care must be taken to ensure that communications, whether written or on social media, comply with the expected standards of behaviour set out in section 2 above". As a result of the reference to section 2, it is difficult to see how there could be a breach of paragraph 3.1 without there also having been a breach of Paragraph 2, thereby rendering paragraph 3 otiose.
19. Paragraph 2.1 specifies three areas of specific actions which should be avoided and concludes with a general paragraph stating that "this includes, among other things, ensuring that the views, rights, values and dignity of others are treated with sensitivity and respect".

20. In this case, the language used by MT was moderate and the Panel believes reflected sensitivity and respect being shown. Further, we believe that the general wording should be read in conjunction with the earlier specific cases of inappropriate action, namely that the actions should not:

- (i) Cause gratuitous offence.
- (ii) Injure the ECF, its officials or its events directly or indirectly.
- (iii) Bring the game of chess or the ECF into disrepute.

21. Whether or not the communication from MT caused offence can only be determined by CF. However, causing offence is not sufficient. Any offence has to be gratuitous. This would only be the case if either:

- (a) MT made statement which he did not believe to be true. There is no evidence to suggest that this is the case.
- (b) If offence was caused, it was unnecessary. On this point, MT's comments reflected his view of CF's performance in response to a statement made by another director which he disagreed with. MT expression of his contrary opinion was stated in a temperate and moderate manner. Short of not replying to the statement he disagreed with, it is difficult to see how he could have replied without either ignoring the first statement about CF by the other director or agreeing with it when it was contrary to his view.

The Panel finds that there is no basis for concluding that MT acted in a manner to cause gratuitous offence.

(c) With the second and third heads:

The Panel finds that:

- (a) We do not see any evidence of any of CF or the ECF being injured.**
- (b) The exchanges were limited to senior ECF officials expressing an honestly held opinion. As such, they do not bring either the ECF or the game of chess into disrepute.**

Paragraph 2.2

(d) This requires officials to comply with ECF bye laws and regulations.

The Panel finds that any determination of whether there is a breach of 2.2 would require a finding of a breach of other provisions of Regulations 4 or 5. Notwithstanding the terms of Regulation 4, it cannot be construed separately.

Paragraph 2.3

- (e) This paragraph requires compliance with the FIDE Code of Ethics (see: [FIDE Code of Ethics](#)). However, the Code of Ethics is concerned with behaviour within FIDE tournaments and events and as such has no application to internal ECF communications.

The Panel finds that the FIDE Code of Ethics has no application to the subject matter of this appeal.

Paragraph 3.1

- (f) This paragraph is concerned with taking care with written or social media communications to ensure compliance with paragraph 2.

The Panel finds that:

- (a) The paragraph is linked with paragraph 2. If MT's communications do not breach paragraph 2, there would be no basis for arguing that they breached paragraph 3.1.**
- (b) The paragraph is concerned with external communications rather than internal discussion amongst directors.**

Paragraph 3.2

- (g) This paragraph concerns ECF publications.

The Panel finds that this paragraph has no application to internal ECF emails.

Regulations 2 and 5

22. As the Panel has found that there are no breaches of Regulation 4 committed through the email of 4th August, the remaining issue to be considered is whether the alleged failure of communication by MT amounts to a breach of Regulation 2 or is otherwise serious maladministration giving rise to a cause for complaint under Regulation 5.

Regulation 2

23. Regulation 2 stipulates the duties of the Chief Executive – see: [Regulation 2](#). Of the various duties set out, those which are pertinent to the alleged failure of communication are to:
- Provide leadership of the Board;
 - Be responsible for actioning and monitoring the delivery of the ECF's strategy; and
 - Be responsible for the overall management of the ECF on a day-to-day basis with all directors reporting to him.

24. If it were the case that, regardless of who completed the work, there was a failure of the work of the Women's Directorate with no intervention by the Chief Executive, this could be construed as a failure to discharge these responsibilities. However, the statement made by MT in the email complained about does not specify such a general failure but simply states that his view of the performance of CF is different from that claimed in the first email. Unless CF is claiming that the work of the directorate for which he is responsible has failed, it is difficult to see how an allegation of a breach of Regulation 2 can be sustained.

The Panel finds that no breach of Regulation 2 is established by the complaint and that such a breach could not be established without CF asserting a failure of the Directorate for which he is responsible.

Serious Maladministration

25. The phrase "serious maladministration" is imprecise with an uncertain meaning. This has caused difficulty previously. It has been recognised that the Regulations would benefit from a review by the Governance Committee and the Panel believes that this would be beneficial given the uncertain scope of the phrase.
26. Any future change does not affect this determination. The Panel has no power to reach a verdict on any provisions other than those in the extant Regulation 5.
27. Maladministration is a term used in English law in the Parliamentary Commissioner Act 1967. This empowered the Ombudsman to "investigate any action ... in the exercise of administrative functions of that department or authority in any case where ... a member of the public claims to have sustained injustice in consequence of maladministration in connection with the act so taken".
28. As such, maladministration is a concept of public law, relating primarily to governmental or quasi-governmental organisation in their dealings with external persons in the discharge of their legal duties. It is not a concept which fits easily with matters concerning the internal operation of an independent, non-governmental body such as the ECF.

Analysis of Facts

29. CF has alleged that MT failed to communicate effectively with him over a two year period. There are a number of points to consider:
- (a) It is not clear why CF believes that there has not been sufficient communication. His complaint states that MT has not spoken to him for two years outside Board meetings. That statement is incorrect as there has been communication, however limited.
 - (b) JC and SVW, as board members, have seen communications during this period between MT and CF. There is no evidence of CF seeking to communicate with MT without MT having

replied. It follows that any breakdown of communication is mutual rather than attributable to MT.

- (c) In addition, there is evidence of a meeting and discussion between CF and MT initiated by MT and directed specifically at seeking to establish an effective working relationship.
- (d) There is no evidence of CF having raised direct concerns about MT's views of his competence with MT. As a director working with a CEO, there would be an expectation of mutual actions to address concerns about director performance.
- (e) In addition, if the work relating to the development of women's chess was proceeding satisfactorily, there would be no cause for MT to intervene and therefore presumably no maladministration.

Decision

30. This complaint is brought pursuant to Regulation 5. Without a breach of Regulation 4, the complaint can only be upheld, if it is demonstrated that the actions complained of amount to serious maladministration.

The Panel has concluded that:

- (i) There is no breach of any of the provisions in Regulation 4 cited in the complaint.**
- (ii) No breach of Regulation 2 as a result of a failure by MT to discharge his responsibilities as Chief Executive.**
- (iii) No scope for there to be a breach of Regulation 2 on the facts established unless CF is claiming a failure within the Women's Directorate during his tenure of Director of Women's chess.**
- (iv) During the period covered by the complaint, MT did communicate with CF outside Board meetings.**
- (v) In particular, MT sought to address concerns with his interaction with CF by way of the meeting on 16th January 2020.**
- (vi) Consequently, there is no basis for determining that MT has been responsible for serious maladministration.**
- (vii) It follows that the Panel has determined that there has been no breach of Regulation 5 and consequently the complaint is rejected.**

Julian Clissold (Chair of the Board)

Mike Gunn

Stephen Woodhouse

For and on behalf of the English Chess Federation

22nd September 2021