

Appeal Against The Findings Of The Regulation 5 Complaint's Panel Relating to a Complaint by Rob Willmoth Against Mike Truran

1. Background.

1.1 Rob Willmoth (RW) raised a complaint against Mike Truran (MT) following a series of emails from MT that RW considered contained a false slur against his good name. Despite the subsequent issuing and acceptance of an apology from MT, and consideration at a Board meeting, RW remained concerned and raised the complaint.

1.2 A Panel consisting of 2 Non-Executive Directors and a member of the Governance Committee (and former Director) considered the complaint. The Panel, working in accordance with Regulation No. 5 (ECF Complaints Procedure), rejected the complaint and, hence, the question of any sanction against MT did not arise.

1.3 The Panel's [Report](#) was published on the ECF website on 13th September 2021. By way of an email dated 16th September RW notified the Non-Executive Directors of an appeal against the Panel's findings. I was first contacted on 22nd September to ask me to assess the appeal. Having agreed to do so, RW's email of 16th September was forwarded to me on 24th September. This report gives my decision on the appeal, which in accordance with Regulation No. 5, is final.

2. Summary Of The Panel's Report.

2.1 As the Panel's Report has been published just a brief summary here will suffice.

2.2 RW's original complaint cited both Regulation No. 4 (Standards Of Conduct For ECF Officials) and Regulation No. 5. While the Panel did assess the material complained of against the various criteria listed in Regulation No. 4, and did find that it amounted to causing gratuitous offence, contrary to Regulation No. 4, this did not meet the threshold of "serious maladministration" set in Regulation No. 5 for upholding the complaint. Any action in accordance with Regulation No. 4 is the responsibility of the Board.

3. My Remit.

3.1 My authority to act in this matter is solely in accordance with paragraph 4.5 of Regulation No. 5. It follows that for me to uphold the appeal I need to determine, whether by my own evaluation or persuasion by the arguments raised by RW, that the Panel were incorrect in finding that MT's actions did not amount to "serious maladministration".

4. Serious Maladministration.

4.1 The Panel criticised the use of the phrase “serious maladministration” in Regulation 5 as being of “uncertain meaning”. I concur with this view. It conveys a notion of a significant level of improper behaviour, but without guidance on its use is rather subjective.

5. Interaction of Regulation Nos. 4 and 5.

Despite my authority not extending to Regulation No. 4, as with the Panel I have not found it possible to reach my conclusions without referring to Regulation No. 4. This has given rise to various concerns over the interaction of these 2 Regulations which I believe to be worth noting with a view to any future revisions of them. However, given that I do not find these concerns to have impacted on my conclusions in this specific case, I am recording them in an Annex to this Report, rather than in the main body of it.

6. Data

6.1 Data from the Panel. I asked Julian Clissold (JC):

- whether the Panel wished me to consider anything other than their published Report
- to answer a query with regard to the addressees of MT’s email of 16th July
- to confirm what appeared to be a minor typographical error

In response, MT’s email of 16th July was forwarded to me and the typo was confirmed (in paragraph 17, “2.1” in bold text should be “2.2”). Otherwise, JC confirmed that the Panel did not wish to submit anything else to me beyond their published Report.

6.2 Data from RW. RW’s email of 16th September raising his appeal gave only brief areas of concern, but lacking detailed arguments. In response to an email from me inviting RW to supply supporting arguments or evidence, I received an email from him on 3rd October. The salient points from this latter email are presented and discussed below.

7. Evaluation Of RW’s Bases For Appeal

7.1 “Some facts that are not correct.

1. “Page 9 of Complaint Under Panel Finds

“As a result, the offence was not necessary. As it was not necessary, it is gratuitous but was followed by an apology which was unequivocal and timely. The giving and acceptance of that apology would have been expected to bring the matter to a close.

“This was not unequivocal and was actually qualified by blaming fide and semantics over the wording of the email”

The actual wording used by MT was “(b)ut anyway, I apologise”. The reference to blaming FIDE (in which I’m not convinced that MT was justified) was actually in an earlier email. To the extent that RW considers it equivocal, this might have been expected to have been raised at the time. According to the Panel Report, RW simply responded “Apology accepted.”

I find that the Panel’s finding that the apology was unequivocal is correct.

2. “The Panel finds that: (a) An apology was asked for, given shortly after being requested and was not qualified..

“Clearly this is also not correct. It was preceded by it was fide's fault and then 'anyway I apologies'”

This is essentially the same point as the previous one, and I reach the same finding.

I find that the Panel’s finding that the apology was not qualified is correct.

3. “ Whether that is right or not, MT apologised when he realised that RW had not acted dishonestly and RW accepted the apology. That should have resolved the matter

“I should not have been put in a position whereby I had to accept an apology in the first place. In any professional organisation bullying behaviour of this kind would not be tolerated”

The Panel found that MT had acted improperly and found this amounted to being gratuitously offensive, contrary to Regulation No. 4. Clearly, this should not have happened. The point in question is whether this also amounts to serious maladministration, or whether, as the Panel obviously found, there is a distinction between the criteria of Regulation 4 and that of Regulation No. 5. Whether or not this should result in any further action by the Board in accordance with Regulation No. 4 is not within my authority to dictate, although I offer a recommendation to the Board in this regard.

I find that considering the totality of the events, the view that MT recognised RW had not acted improperly and had given an apology that was accepted, the Panel’s view that this might have resolved the situation is reasonable.

4. “The Panel has concluded, for the reasons stated earlier and viewing the fact pattern in totality, that, notwithstanding the offence caused to RW, serious maladministration has not been established. It follows that the Panel has determined that there has been no breach of Regulation 5 and consequently the complaint is rejected.

“The final decision. The offence caused and the nature of the actions cannot be deemed as normal and acceptable in any organisation. For the complaint to be then rejected, this is a vindication of this type of behaviour. Since the complaint was put on the website I have been approached by three other people who have experienced this type of bullying behaviour by Mr Truran. Unfortunately these people don't want to be named, suffice to say they are no longer in office.” (My italics to signify the distinction between the quote from the Report and RW’s observation on it.)

The extent of RW’s conviction of injustice in that despite the finding of causing gratuitous offence, no sanction has been administered to MT is plain to see. However, I cannot find that RW has presented sufficient argument here, or in the essentially similar points above, that the misbehaviour by MT should be elevated to the level of serious maladministration. I must, therefore, continue to side with the finding of the Panel that the threshold of serious maladministration required for Regulation No. 5 has not been met.

I find that the Panel’s rejection of RW’s complaint was correct.

5. “a) MT’s statement that he did not call RW a liar is factually correct

“I was quite shocked by this. Again just semantics. The above statement is trying to excuse his behaviour. Any reasonable person would take this as being called a liar. So this is NOT factually correct.”

Looking strictly at the wording of MT’s email of 16th July, the Panel is correct. However, I agree with RW that the distinction between calling someone a liar and suggesting that they have originated and conveyed a false statement, lies well within the range of semantics. I doubt that many people would see it otherwise. I have also noted 2 further details that can hardly be represented as mitigating factors. Firstly, the actual syntax used by MT. Had this been “is this a straight lie” it might be read as an open-minded question. However, “isn’t this just a straight lie” gives a clear impression the MT has already formed the view that it is. Secondly, I referred previously to not being convinced that MT’s statement that his misunderstanding can be laid at the door of incomplete information from FIDE. MT’s email of 16th July, as subsequently forwarded to me, included an attached email from FIDE timed 20:25 on the 16th.

Whilst this does not contain the detail of the organisation being done jointly by FIDE and RW as Chairman of EJCOA on the face of FIDE’s email, towards the bottom of it it states:

“Full schedule and more information about the seminar can be found [here](#).”

Clicking on the link takes you to the page that does give this additional information.

It is understandable that at 10pm on a Friday evening, MT might have not been inclined to investigate a link at the bottom of an email, but unless the page linked to has been updated since, the clarification that MT subsequently accepted, was there.

I concur with RW that the distinction between the precise wording of MT's email of 16th July and implying that RW was a liar, lies within the range of semantics, and doubt that many readers would see it otherwise. However, given that I find it to have been an insubstantial difference, I don't find that this would have altered the findings of the Panel.

6. "Page 7 Whether that is right or not, MT apologised when he realised that RW had not acted dishonestly and RW accepted the apology. That should have resolved the matter

Acceptance of an apology does not get around the fact that it happened and should not have happened. Being the better person, I would have accepted the apology if he had not repeated exactly the same in his reply to Malcolm Pein ccing and even bigger audience.

The reply to Malcolm Pein (MP) is, I presume, the material included in item (xi) on pages 4 and 5 of the Report. From the chronology of the Report, I understand that this exchange occurred after the Board meeting of 30th July, at which most Directors were present. The clear indication is that the exchange was not instigated by MT, but was in response to an email from MP to matters raised by MT 2 weeks previously.

Given that MT did not initiate this correspondence, and that by then most, if not all Board members would have been aware of the matters raised, I find no basis to disagree with the Panel's finding (given in item (iv) on page 10 of their Report) that this correspondence should not be seen as aggravating the earlier actions or undermining the previous apology given.

7. "At RW's request, the matter was discussed at the Board meeting on 30th July. The Board agreed, with RW concurring, that no further action should be taken and that such action and any related publicity would be damaging to the ECF.

"The point about no further action being taken is simply not correct. It was decided firstly that Mr Rosenbaum would construct a statement for the minutes to be redacted. The point of the wording 'no further action' is implying that the board consider the action as being minor. Actually everyone in that condemned his behaviour. I and other Directors would not have agreed to 'no further action' of any sort. This is very misleading. I actually contacted Danny after the meeting saying it was unfair for him to be out in this position and I would take further action."

RW is justified in raising this point. Item 6(x) of the Report gives what appears to be the full redacted Minute of this Board discussion. It makes no reference to it being agreed, with RW concurring, that no further action be taken. The quotation from the Report that RW has given above occurs rather later, as item 25(iii) on page 10. It clearly goes beyond the redacted Minute, and no source for it is given. Two members

of the Panel, as well as RW attended this Board meeting. I have no basis to differentiate on the validity of the opposing recollections of the various parties.

I find that the statement given in item 25(iii) on page 10 of the Report is problematic. It goes beyond the redacted Minute given as item 6(x), with no source quoted, and reflects differing recollections of the Panel members and RW who were at the relevant Board meeting.

7.2 “However for me the final decision of the complaint not being upheld, not even with a minor written warning shows there are other forces at work.”

This statement was included in RW’s email of 16th September. I invited RW to provide any evidence he might have of such “other forces”. The following was contained in RW’s email to me of 3rd October.

“I have no direct proof of other forces at work. The panel consisted of people supporting Mr Truran's current election campaign. This panel, all being respectable people I believe, had an unconscious bias toward the process. The complaint came at an unfortunate time just before the very unpleasant election campaign. I believe partly that an upheld complaint would reflect badly on the CEO and was therefore despite overwhelming facts rejected

“From my perspective, no doubt people will see the timing of my complaint as political based on the election. This is not the case. The timeline was determined by Mr Truran starting the defamation in the first place. I am simply deeply offended by his unprovoked actions and its knock on consequences and even more deeply offended that a complaint of this nature with clear evidential facts is not upheld.”

It would be naive of me not to recognise the febrile atmosphere in the runup to the forthcoming AGM, with MT and MP competing for the position of CEO. This provides fertile ground for conspiracy theorists. Fortunately, I have only to consider firm evidence; any wider verdict may be in the remit of Council at the AGM.

RW is closer than me to the current views of individual Board members. However, I note that no members of the Panel are listed as having nominated either candidate. Conversely, RW is recorded as one of the nominees of MP and is joint-proposer with MP of various motions on the agenda that appear to sum up the major differences of policy between MT and MP. Reflecting his own words with regard to the Panel members, RW might equally have concluded that this gave him a bias, whether subconscious or otherwise, against MT.

I have no evidence of “other forces” being at work. I find no reason to question the integrity and objectivity of the Panel members. Equally, I find no reason to doubt that RW is motivated solely by the wish to defend his good name.

7.3 (The following item was given at the start of RW's email to me of 3rd October, but I consider it fits better to address it here.)

"It is very clear from the facts that this unpleasant incident did occur and was not provoked. Given, that it did happen and all the clear facts point this out very clearly. What should have followed is a sanction of some sort. Providing a ruling of 'complaint not upheld' simply is perverse at the very least in that it does not follow from the clear facts on the case."

I find for all the arguments discussed in this report that the rationale used by the Panel to reach the conclusion they did, working within the constraints of Regulation No.5, was not perverse. However, I do find that RW would be justified in considering these constraints unsatisfactory, given that the Panel did find that MT's actions were gratuitously offensive, contrary to Regulation No.4. This is out with my jurisdiction under Regulation No. 5, but I do make a recommendation to the Board in this regard.

8. Conclusions.

8.1 I conclude that my consideration of the Panel Report and the arguments presented to me by the appellant, do not provide a basis to defer from the Panel's conclusion that the actions that occurred, whilst far from satisfactory, did not amount to serious maladministration. Accordingly, the appeal is rejected.

8.2 I conclude that despite rejecting the appeal, it cannot be found that a complaint that resulted in a finding of causing gratuitous offence was entirely without merit. I therefore conclude that in accordance with section 1.3 of Regulation No. 5, the £50 fee paid by RW should be refunded.

9. Recommendation.

9.1. The following recommendation strays beyond my jurisdiction under Regulation No. 5. However, In addressing these matters I have concluded that there are substantial problems with how Regulations Nos. 4 and 5 work together. I elaborate on this further in the Annex to this report.

9.2 I recommend that given:

- that the Board meeting on 30th July preceded the Panel's work and finding of gratuitous offence having been given
- that the full outcome of that meeting is disputed by various parties who attended

that it would be appropriate for the Board to consider whether further consideration is appropriate in accordance with their responsibility to administer Regulation No. 4.

Julie Denning
6th October 2021

Annex: Concerns Regarding The Inter-Relationship of ECF Regulations Nos. 4 and 5.

1. Responsibility for administering Regulation No. 4 (Standards of Conduct for ECF Officials) lies with the Board. Section 4.1 of the Regulation refers. However, as determined by the Complaint Panel in this case, if the conduct in question results in a complaint, that complaint can only be considered in accordance with Regulation no. 5, which sets a high threshold for success of showing that “serious maladministration” has occurred. This would seem to render Regulation No. 4 largely useless. Consider the hypothetical situation that an ECF official contacted me, just a regular ECF member, in a manner I considered offensive, I might well consider that some form of redress was warranted, whilst accepting that the degree of offence did not amount to serious maladministration. However, in bringing my concern to the Board I must surely be deemed to have raised a complaint. Hence, off to Regulation 5. I’m sure this is not what was intended, but I’m struggling with resolving the conundrum.
2. The Panel and I have found that the term “serious maladministration” is ill-defined, subjective and possibly inappropriate for an organisation such as the ECF. This needs resolving. I also note that Regulation No. 5 states “complaints should only be brought where there is an alleged serious case of maladministration”. The use of “should” might be interpreted as giving some scope for discretion, which “may” would not. Whilst accepting the whole term may be revised, any such remaining ambiguity should be resolved.
3. Section 2.3 of Regulation No. 4 states “All ECF officials must comply with the FIDE Code of Ethics”. In the present case, the Panel concluded that the FIDE Code of Ethics has no application to the subject matter of this appeal (sic. This should surely have been “complaint”). I concur that the FIDE Code of Ethics would have added nothing to the consideration of this complaint. However, I have a problem with the Panel’s rationale for reaching this conclusion; namely, “the Code of Ethics is concerned with behaviour within FIDE tournaments and events and as such has no application to internal ECF communications”. It is self-evident that the FIDE Code of Ethics will apply to FIDE tournaments and events, regardless of whether or not the ECF acknowledges this. If this was the sole intention of including this in Regulation No. 4, it would be redundant. Whilst aspects of the FIDE Code are clearly related to events under their auspices, there are aspects of it, and the associated guidance material, that might well be appropriate for a National Federation to adopt generally. I consider the more logical reason for including this in Regulation No. 4 is to ensure that relevant aspects can be relied upon in England and that the Board has given itself jurisdiction in this.
4. Both Regulations state that they are “pursuant to Article 82 of the Articles of Association of the English Chess Federation”. Following subsequent amendments to the Articles, the reference should be to Article 88.

5. Both Regulations refer to Regulation no. 2 of August 2014. Once again these references are out of date.