

**UNDER**

the ISAF Racing Rules of Sailing 2013-2016  
(RRS)

**AND IN THE MATTER OF**

a report to Yachting New Zealand by the  
Royal New Zealand Yacht Squadron  
concerning  
**Bill Miller** and **Mark Bond**

### **Introduction**

1. We have been appointed by Yachting New Zealand (YNZ) to conduct an investigation and report to YNZ. The requirement for this report arises because YNZ received a report on 31 August 2016 from the Royal New Zealand Yacht Squadron (RNZYS) under Rule 69.3 in respect of the owners of the Stewart 34 yacht "Pioneer". This obliged YNZ to proceed in accordance with 69.3 and carry out an investigation, and, if appropriate, hold a hearing. The purpose of a hearing would be to determine if YNZ should take any disciplinary action within its jurisdiction, and suspend eligibility, including World Sailing<sup>1</sup> eligibility, in respect of either party named in the report.
2. The YNZ regulations include a prescription to R69 of the RRS. Clause 4.5.2 provides as follows:
  - (i) YNZ shall appoint from time to time one or more Complaints Commissioners, a Rule 69 Hearings Committee and a convenor of that committee;
  - (ii) A report under rule 69.2 or any other report shall be in writing and must detail the alleged gross infringement of a rule, or of good manners or sportsmanship, or conduct it is alleged has brought the sports into disrepute;
  - (iii) All written reports shall be referred to one or more of the Complaints Commissioners who may:
    - a) Decide to take no action, or

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<sup>1</sup> Formerly ISAF, the organisation's name used in the 2013 – 2017 RRS.

b) Investigate the report.

If the Commissioner(s) considers, after investigations, that a hearing is appropriate, the Commissioner(s) shall present evidence before a panel of not less than three Hearing Committee Members chosen by the Hearings Committee Convenor;

(iv) Before a hearing takes place, a copy of the complaint shall be provided to the person or persons the subject of it;

(v) Notification of the hearing shall be given to the person or persons against whom the complaint is made, with advice that they may attend the hearing, may be represented, and may make submissions and present evidence relating to the complaint.

3. The parties the subject of the report (Bill Miller and Mark Bond) were invited by us to provide such information (whether it be submissions, documents, evidence or other relevant material) as they wished us to consider in the course of our investigation. A quantity of documentation was received from them. Because the complaint relates to an alleged non-compliance with the Stewart 34 Class Rules, we made a request of the Owners Association for information which would assist us. In particular we were seeking a copy of the relevant class rules and any information which the Association could supply concerning the compliance of the yacht "Pioneer" with the class rules when built, and specifically concerning the keel fitted to that yacht. We received documentation from the President of the Owners Association, although note that some of that material is peripheral to and has no connection with the complaint that we are required to investigate by reference to the report received from the RNZYS.

#### **The scope of YNZ's jurisdiction, by reference to relevant rules and the YNZ prescription**

4. Rule 69.3 provides a broad discretion to a NA. While an investigation is a requirement, a hearing is not. If there is a hearing the NA may take disciplinary action within its jurisdiction as it considers appropriate, including suspending eligibility permanently or for a specified period of time. We particularly refer to the discretion ("it may take disciplinary action within its jurisdiction"), as in this case a notable aspect is that the requests for redress that were before the RNZYS Protest Committee referred to a non-complying keel on the relevant yacht (Pioneer), alleged to be in breach of the class rules since the time of the

launch of the boat<sup>2</sup>. As the protest by Mr Boberg dated 28 July 2016 states, the keel in question has evidently not been altered from the date of launching of the boat, so necessarily we are carrying out an investigation in relation to compliance with class rules going back nearly 40 years.

5. The YNZ prescription to Rule 69 (paragraph 3) states that if the Complaints Commissioner(s) consider a hearing is appropriate *the Commissioner(s) shall present evidence before a panel of not less than three Hearing Committee members chosen by the Committee Convenor*. In our view it follows that in making our investigation and when reporting, the quality of the evidence we would need to present and also the availability of any witness we consider would need to be called by us were a hearing to be recommended is a crucial factor.<sup>3</sup> We need to consider the material that has been made available to us by RNZYS and the Class Owners Association and the information that has been supplied by Bill Miller and Mark Bond to determine whether we consider we can present evidence which would satisfy the YNZ Hearings Committee as to liability, to that Committee's *comfortable satisfaction*<sup>4</sup>.
6. Bill Miller and Mark Bond have made it plain that if a hearing were to proceed they would dispute the allegation they have competed in racing events in their yacht "Pioneer" when the keel of the yacht was "non-complying" and thereby committed gross misconduct by reference to Rule 69. Their response to the allegations gives us an indication of the evidence they would present and includes documentation relevant to the central issue of compliance or otherwise with the class rules.
7. In our view, it is our responsibility on behalf of YNZ to assess the evidential material and any further information supplied to us for ourselves, and to reach our own conclusions as to whether there is a case to answer. Our task is to determine whether a hearing should be conducted, not to make a decision on what the outcome should be. We must assess all the available information and evidence to decide whether we believe that a case

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<sup>2</sup> We are advised the yacht was launched in October 1978, or shortly thereafter.

<sup>3</sup> To state the obvious: of itself, the documentation received from the RNZYS is not evidence. The YNZ prescription makes it clear that, if we were to recommend a hearing, evidence will be required. It is not the decision, but the availability and quality of the underlying evidence, that is of first importance to us.

<sup>4</sup> This is a standard of proof that falls between the "balance of probabilities" standard and the "beyond reasonable doubt" standard. In short, the standard of proof will vary (increase) depending on the seriousness of the allegations the affected party is facing. This standard of proof is that adopted by the ISAF Disciplinary Commission, and is also used by the Court of Arbitration for Sport.

brought before a YNZ Hearings Committee has sufficient prospect of establishing liability to the standard of proof required (comfortable satisfaction) to justify such proceedings being undertaken.

8. Finally, we refer to the wording of the relevant rule provision itself, which contains no express limitation on the NA's powers of investigation and hearing. In our view, and in accordance with the conventional approach to statutory interpretation, we consider that if the authors of Rule 69 intended that a NA was restricted in the scope of its investigation R69.2 would have explicitly so stated. It does not.

### **The Allegation of Gross Misconduct**

9. Because there is not a separate report detailing the specific allegations, a difficulty in carrying out this investigation is to determine what exactly the 2 competitors the subject of the report have done or failed to do, with their actions amounting to gross misconduct by reference to rule 69.1.

10. The documents we must refer to are:

- a. The Redress Request Hearing Decision (Decision); <sup>5</sup>
- b. Protest form dated 28 July 2016 completed by G Pilkington (boat name "Playbuoy"), which attached a report entitled "Measurers report Pioneer Date 20 June 2016" (Measurers' report);
- c. Protest by W Boberg (boat name Phylor) dated 28 July 2016.

11. Referring to the Decision of the Protest Committee Panel (Panel) the protests were in fact Requests for Redress (Request). The Request by the competitor Boberg sought redress (one must assume in relation to finishing results for the competitor's own yacht) covering the Stewart 34 Chairmanship Series from 1982 and all the years following until 2007 (so 25 years of race events). The Request by the competitor Pilkington sought redress in respect of the 2015 – 2016 Monday Night series<sup>6</sup>, but described in the Panel decision as concerning the 2015 – 2016 Championship series that had a final race on

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<sup>5</sup> Undated, but the document records a hearing date of 9 August 2016.

<sup>6</sup> By reference to his Request.

Monday 7 March 2016.

12. Unsurprisingly, the Panel found the Requests were lodged outside the time limit specified in rule 62.2, but identify that the relevant time limit was not the completion of the race event or series referred to in the 2 Requests (as we might have expected), but assessed compliance with the time limit in rule 62.2 by reference to receipt of the Measurers' report which the decision records had been received 38 days before the Requests were lodged.<sup>7</sup>
13. In the section **Facts Found** item 4 states that "Both requests concerned the alleged illegal non-class keel on Pioneer", and item 6 states that "Pioneer's keel was found to *"have not been built to the class plan."*
14. The Boberg Request also refers to the question of whether the keel on the yacht Pioneer complies with the class rules (although there is reference to "other allegations" and "other irregularities").
15. The Pilkington Request makes a more general statement that Pioneer *"does not comply with the class rules, see report attached"*. By reference to the Measurers' report it addressed 3 issues in relation to whether the yacht Pioneer complied with class rules (the rudder, the keel, and the "equalising weights"). The report did not find a non-compliance by reference to the class rules in respect of the rudder. In respect of the keel, the report concluded: "Result of these measurements shows Pioneer's Keel has not been built to the Class plan". In relation to the equalising weights, the report appears to determine that the table fitted as part of the accommodation within the yacht should be removed and that an additional 36kgs was required as compensating weights and was to be noted on the Class certificate.
16. Having considered the material that was before the Panel in relation to what the issue of class rules non-compliance was, we conclude that the sole issue to be investigated by us is as recorded in the Decision of the Panel – the allegation that the keel on Pioneer was "illegal" by reference to the class rules.
17. Accordingly, our investigation and this report takes no account of material<sup>8</sup> that refers

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<sup>7</sup> A matter that need not concern us further in completing the investigation.

<sup>8</sup> As received by YNZ from the RNZYS, from Bill Miller and Mark Bond, or from the Stewart 34 Class Owners Association.

to or makes allegations concerning other irregularities or non-compliances of the yacht Pioneer in respect of the class rules or any other alleged misconduct by the competitors Miller and Bond when racing the yacht Pioneer.

18. In our view the relevant material is that which persuades us (or not) that evidence could be presented at a Rule 69 hearing that one or both of the competitors (Bill Miller and Mark Bond) knowingly competed in racing events in Pioneer over many years knowing that it had a non-complying keel and despite the fact that it had a valid measurement certificate.

### **Documents received in relation to this Investigation**

19. YNZ sent us the following documents:

- a. Protest (Redress) decision
- b. Boberg Redress request
- c. Pilkington Redress request and attached Measurers' Report
- d. email Paul Groom to David Abercrombie dated 28 July 2016
- e. Statements<sup>9</sup> from Messrs Fitzpatrick and Goodman
- f. email Paul Groom to David Abercrombie dated 7 September 2016
- g. letter Paul Groom to Acting Chairperson Stewart 34 Owners Association dated 20 August 2016
- h. letter Bill Miller to the Stewart 34 Owners Association (undated)
- i. letter from Bill Miller and Mark Bond to the Stewart 34 Owners Association (undated)

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<sup>9</sup> Signed and witnessed as declarations under the Oaths and Declarations Act.

20. The Stewart 34 Owners Association sent us the following documents:

- a. the Class Rules (dated 1 August 1994, 26 June 2006, and what we understand is the current version dated June 2015)
- b. 2 separate plans (one hand drawn and one computer drawn) of the Pioneer keel
- c. plan of Stewart 34 yacht, designer R L Stewart dated March 1959
- d. email from Paul Groom Association chairman dated 3 October 2016

21. Bill Miller and Mark Bond sent us the following documents:

- a. from Mark Bond a letter dated 7 November 2016
- b. from Bill Miller a letter dated 5 December 2016
- c. from Bill Miller a memorandum "Supporting information" dated 5 December 2016, and the following documents:
  - d. measurement certificate for Pioneer dated 12 March 1982
  - e. letter Miller to Chairman Owners Association in 1978
  - f. drawings made by A.G.A in August 1978 issued by the Owners Association to Coastal Yachts Limited
  - g. minutes Owners Association committee meeting dated 17 October 1984
  - h. letter from secretary Owners Association to RNYYS dated 18 May 1982
  - i. letter dated 25 July 2016 from Ian Fish
  - j. page 104 book "Stewart 34 Yachting – The First 50 Years"
  - k. letter (undated) from Ray Beale
  - l. letter from DE Brooke to the Owners Association dated 16 June 1981

- m. email George Backhus to Paul Groom dated 16 May 2016
- n. email from Brett Hampson to Paul Groom and Cherry Mclvor dated 14 May 2016
- o. letter John Ormrod to YNZ dated 4 December 2016
- p. letter from Cherry Mclvor to YNZ dated 25 November 2016
- q. letter from Robyn Boserio to YNZ dated 24 November 2016
- r. Measurement weight certificate issued by J Beck dated 8 October 2011
- s. Copy page 104 book "Stewart 34 Yachting – The First 50 Years"
- t. copy NZYF Honour Award 1991
- u. copy Stewart 34 Owners Association Constitution
- v. copy Class Rules
- w. email dated 7 March 2017

**The issue to be determined**

22. A great deal of the material that we received has no relevance to the issue that we are required to address. Put simply, and by reference to the report received from RNZYS we consider the single issue is:

*"have the "competitors" (being the owners of the yacht Pioneer who acknowledge having raced her in the competitions or events referred to in the redress requests) committed gross misconduct as defined by Rule 69.1 (a) by competing in that yacht when they knew the keel, did not comply with the class rules, and despite the fact that the yacht held a valid measurement certificate during this period of time?"*

23. In our view, the key documentation and evidence is:

- a. the information concerning the construction of the first three fibreglass boats and associated documentation concerning approval of the plans for fibreglass



construction including a new keel drawing approved in August 1978 and referred to in all three copies of the class rules in clause 7;

- b. written information received from Ian Fish and Ray Beale as to the construction error in respect of the keel stub and the steps taken to deal with that;
  - c. correspondence and minutes relating to the construction error and the resolution of the keel/hull construction on the affected 3 hulls;
  - d. measurement certificates for Pioneer issued in 1982 and 1987
  - e. the Class Rules as supplied to us dated 1994, 2006 and 2015
  - f. information supplied by Bill Miller (the owner at the time of construction) as to when the keel was built, and the yacht launched.
24. We have read all the material that has been supplied, and given it such weight as we consider appropriate in order to determine our recommendation. We have disregarded various statements of opinion as to whether the keel of Pioneer was compliant, and references to other alleged illegalities (whether in relation to the yacht Pioneer or other Stewart 34 yachts), and in particular the detailed material supplied concerning whether or not Pioneer or indeed other Stewart 34 yachts when weighed from time to time have met the minimum weight requirements of rule 18, since the only issue raised in the report from RNZYS relates to the keel of Pioneer.

#### **A brief history of the Stewart 34**

25. The design of the yacht was completed by RL (Bob) Stewart. His plan is dated March 1959 and describes the yacht as a "Light Displacement Cruising Yacht," The plans include some notes indicating the desire is yachts constructed off the plans would be *"if not the same certainly very similar"*.<sup>10</sup> Reference is made in the rules to *"one design,"* but an email we received from the current Chairman of the Owners Association acknowledges the class *"is not a rigid one design like a production fibreglass boat where each and every boat is expected to conform to exacting tolerances. Stewart*

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<sup>10</sup> 1. Apart from normal fairing, no intentional departure is to be made from the lines; accommodation layout is optional but must be at least up to the standard of that shown; construction may be heavier but not lighter than a specified planking thickness, the ballast keel to be not less than 1 1/4 tons and the "sail plan strictly as shown" using one sailmaker.

*34s have been built since 1960 in timber and from 1978 in both timber and fibreglass with a variation in construction techniques, interior layouts, improvements in rudder design and a change in keel ballast. In other words, the class has been constrained to a very tight box rule, not perfect but as close as practical."*

26. Information received from Bill Miller advises that the original three boats (Princess, Pim, and Patiko) were built by John Lidgard and launched on the same day in November 1960. There were no clear rules so nothing was measured and apart from some measurements there was no record of any weighing or measuring until 1978 when the change to fibreglass boats was being promoted.
27. Mr Miller formed Coastal Yachts Limited with the intention of constructing fibreglass Stewart 34s, with the approval of the designer. Eventually 19 fibreglass boats were built. We have been supplied with the plans that were drawn to enable the yacht to be constructed in fibreglass. The earliest version of the Class Rules that we have been provided with (1994) refers in clause 2 *Hull* to the Bob Stewart plan for wooden construction and the plan for the GRP fibreglass construction.
28. There is no reason to doubt the advice provided by Bill Miller and Ian Fish (who together formed Coastal Yachts Limited to build the fibreglass Stewart 34 yachts), corroborated by the yacht designer and boatbuilder Ray Beale as to the preparation of the wooden Stewart 34 Princess to enable a mould to be made for GRP production. A number of statements we have been provided with describe the error made by the boatbuilder Graeme Pelham in placing the keel stub some 13 inches too far aft, with the result that the first 3 hulls were produced off a mould with the "seating" for the keel in the wrong place. Mr Miller has produced a copy of his 1978 letter to John Fry then Chairman of the Owners Association detailing the error and the steps taken to marry the keel<sup>11</sup> to the incorrectly located keel stub. This boatbuilding mistake was subsequently rectified by relocation of the keel stub, so the problem was confined to the first 3 GRP hulls.

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<sup>11</sup> A new keel design drawing including aerofoil was approved on 15 August 1979 for all future new boats – refer clause 7 Class Rules.

### **The keel on Pioneer**

29. There appears to be no dispute about the advice we have from a number of sources that there have been no changes to the hull (including appendages) of Pioneer since construction and launching in 1978. Reference to this is made in the Redress Request of W Boberg.
30. Mr Miller has produced a copy of what we are advised is the first measurement certificate issued by the Owners Association to him as owner of the yacht Pioneer. It is dated 12 March 1982. Reconfirmation of that measurement certificate is shown as verified on that same document on 5 November 1987.
31. The certificate must be taken as verification that the Class Association at the time considered that the boat complied with the Class Rules and was entitled to race. We understand the yacht has since been issued with further measurement certificates over succeeding years. The yacht's owners have competed in racing events over a long period of time without a question or issue being raised about compliance of the keel as originally fitted to Pioneer- we understand until completion of the report dated 20 June 2016.
32. We have considered that report (in relation only to the keel). We note that the measuring proceeded on the basis of measuring the keels on 6 Stewart 34 boats, including Pioneer. The Report states that these measurements "*along with the original plan*" provided a base for checking Pioneers keel. The conclusion in the report is that "Pioneers keel has not been built to the Class plan".
33. The Redress Request by W Boberg states that the keel was found not to comply with the S34 class rules and that the class certificate for Pioneer was withdrawn at a committee meeting subsequent to the completion of the report. In completing this investigation, our role is not to adjudicate on whether or not the decision of the Owners Association committee to withdraw the measurement certificate for Pioneer was correct. Our task is to consider whether if the Gross Misconduct allegation were to proceed to a hearing we have sufficient prospect of establishing liability to the standard of proof required.

34. If indeed the keel on Pioneer has not been altered since the boat was constructed and as the yacht was measured and the owner was issued with measurement certificates from at least 1982, there is a difficulty with the proposition that the yacht's keel can now be found to have not been built to the class plan. . Documentation supplied by Mr Miller indicates the problem with the keel stub location on the first 3 GRP hulls was disclosed by the builders and a solution for fitting the keel was put forward to the Class Association for approval. The subsequent issue of measurement certificates supports the conclusion the measurers approved the solution arrived at. Pioneer has been raced by the competitors subject to this enquiry while holding valid measurement certificates during the periods referred to in both Redress Requests.

### **Conclusion**

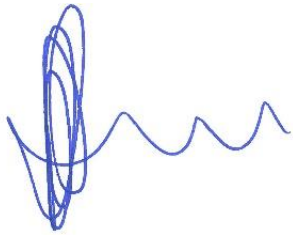
35. It is our recommendation under Rule 69. 3 (a) and YNZ Prescription to Rule 69 that no further action be taken against either Bill Miller or Mark Bond. Having carefully examined the evidence and other material that has been provided to us in order to complete this report it is our assessment a hearing should not be conducted.

36. For completeness, we note that as the RNZYS report was completed in August 2016 and we were appointed as Complaints Commissioners and requested to report in September 2016, we have carried out our investigation in accordance with the Racing Rules of Sailing 2013 – 2016. All references in this report to the relevant rules are to the 2013 – 2016 rules.

37. As from 1 January 2017 the Racing Rules of Sailing 2017 – 2020 came into effect. The provisions of Rule 69 have been significantly amended and now action to be taken by a National Authority now in accordance with the World Sailing Regulation 35, Disciplinary Code. Reference to the Disciplinary Code and in particular regulations 35.5.1 – 35.5.4 indicates that action by a NA in relation to complaints allegations or reports of Misconduct now relates only to a complaint, allegation or report that has been considered and adjudicated upon by a protest committee under the (new) rule 69.2. A finding of Misconduct by a protest committee is required before Action can be taken by YNZ, and no such finding was made by the Panel in this case. If we are

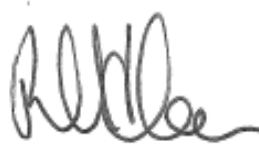
wrong in our conclusion that our investigation and report should be completed under the 2013 – 2016 Rules, and the 2017 – 2020 Rules apply, then the question of alleged Misconduct (as defined in the new rules) was resolved by the decision of the RNZYS Panel.

Dated at Auckland this 24<sup>th</sup> day of March 2017



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Richard Brabant



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Russell Green