

Dear David,

Thank you for your instructions to act in this matter. My advice in response to your questions is set out below.

1. Was there proper adherence to the protocols as detailed in the Constitution as they relate the “Complaints Process”?

I refer to the procedural issues raised by Mr Heyting in his letter dated 31 March 2020.

- a. The first issue was the date of service of the notice of the complaint.
- b. Clause 11(3)(b) refers to “14 days from the time the notice is served”.
- c. Clause 46 of the Constitution deals with the service of notices, and states that it is served on the date when it would have been delivered in the ordinary course of post.
- d. Therefore, the date of service is 20 March 2020.
- e. As Mr Heyting responded within 14 days of all possible dates of service, it does not appear that anything turns on this point.
- f. Further, if Mr Heyting required more time to respond, he could have sent a separate earlier letter seeking clarification on the date of service.
- g. The second issue was that copies of the actual complaints were not provided.
- h. Clause 11(3)(a) of the Constitution refers to “notice of the complaint”, and does not specifically require that a copy of the complaint is provided.
- i. Provided that Mr Heyting was provided with sufficient details of the complaint to enable him to understand it and respond properly to it, this issue should not be significant.

I refer to Mr Heyting’s letter dated 11 August 2020.

- j. The first issue raised in that letter is that the decision does not refer to a finding that Mr Heyting had violated the Constitution.
- k. The Constitution, at clause 11(5) requires that there is notice given “of the reasons given by the committee for having taken that action”. This has occurred.
- l. The second issue is that Mr Heyting was not given proper notice of his rights to appeal the decision.
- m. He is correct that this has not occurred within the required timeframes.
- n. Whilst the formalities have not been observed, he has not lost the opportunity to appeal, as shown by the emails of 12 August 2020. Therefore, there is unlikely to be any prejudice to him.

2. Was Gary Heyting afforded every opportunity to contest the reasonableness of the complaints?

- a. There is no requirement to provide Mr Heyting with “every opportunity” to contest the complaint.
- b. The requirement is that the Constitution is complied with, which is addressed above.
- c. It appears that Mr Heyting has been provided with reasonable opportunities to respond to the complaint, both initially and through the appeals process.

3. Any recommended changes to the Constitution to tighten and clarify the “Complaints Process”?

- a. Changing the wording to provide clarity to the issues raised by Mr Heyting may be prudent.
- b. The other option is to reduce the level of detail contained in the Constitution, and provide for the committee to make by-laws prescribing the disciplinary process. This would allow it to be changed from time to time without the need for all of the members to agree.

4. Recommended course of action for the current committee to finalise this matter?

- a. If you are willing to accept Mr Heyting’s proposal, then a resolution should be passed to this effect.
- b. If you are not willing to accept Mr Heyting’s proposal, a general meeting should be called.