

# NOTICE OF APPEAL

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Arising from a penalty imposed on the Australian Team Pilots at the  
10TH FAI WWGC, Lake Keepit, Australia, January 2020

**AUSTRALIAN TEAM PILOTS**

**3 April 2020**



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## 1. Definitions

Annex A	Annex A to Section 3 – Gliding, RULES FOR WORLD AND CONTINENTAL GLIDING CHAMPIONSHIPS, CLASS D (gliders) Including Class DM (motorgliders), 2019 Edition, valid from 7 October 2019 (Appendix 15)
Appeal Tribunal	The CASI tribunal deciding this appeal
ASAC	Air Sport Australia Confederation
Australian Coach	Mr Matt Gage
Australian Team Pilots	The 9 Australian female pilots Jo Davis, Jenny Ganderton, Kerrie Claffey, Lisa Trotter, Claire Scutter, Catherine Conway, Ailsa McMillian, Lisa Turner and Jenny Thompson
Australian Team	Broader collective – Captain, Coaches Crew & Pilots
Australian Team Captain	Mr Terry Cubley
CASI	FAI Air Sport General Commission
The Championship	10 <sup>th</sup> Women’s World Gliding Championship
Championship Director	Mrs Mandy Temple
Chief Steward	Ms Frouwke Kuijpers
Deputy Director	Mrs Anita Taylor
FAI	Federation Aeronautique International
FLARM	Device fitted into a glider to provide traffic awareness and collision avoidance technology
General Section	FAI SPORTING CODE, GENERAL SECTION, 2020 Edition, Effective 1st January 2020, Approved by the Air Sport General Commission, December 6, 2019, Ver. 1.1 (Appendix 14)
<i>G-Track Live</i>	The Australian-developed live tracking program used by the competition organisation
<i>G-Track Live Administrator</i>	Mr Jacques Graells
IGC	International Gliding Commission
Jury President	Ms Gisela Weinreich (Germany)
Jury Members	Mr Max Stevens (New Zealand) & Mr Wojciech Scigala (Poland)
Local Procedures	Local Procedures WWGC 2019 V9.1 (Appendix 16)
NAC	National Airsport Control
Organisers	The Competition Organisation
Public OGN	An Open Glider Network
Private OGN	An Open Glider Network with restricted access by the Network owner
OGN	Both public and private Open Glider Network (OGN)
Scorer	Mr Peter Temple
Task Setter	Mr Bruce Taylor
WhatsApp	An alternative to the smartphone's built-in SMS application that uses the Internet to connect to anyone whose phone number is registered in your phone's address book.
Weather person	Mr David Shorter
WGC	World Gliding Championship
WWGC	Women’s World Gliding Championship

## 2. The event under question

10th FAI WWGC (Women's World Gliding Championship) held at Lake Keepit Soaring Club, New South Wales, Australia from 4 – 17 January 2020.

## 3. Decision appealed upon

This appeal relates to the decision of the Championship Director and subsequently the International Jury to impose a 225 point penalty upon each pilot within the Australian Team at the 10<sup>th</sup> FAI WWGC.

The pilots who received the penalty are Jo Davis, Jenny Ganderton, Kerrie Claffey, Lisa Trotter, Claire Scutter, Catherine Conway, Ailsa McMillian, Lisa Turner and Jenny Thompson (Australian Team Pilots).

## 4. The Appellant

The Appellant to this appeal is the Australian National Airsport Control (NAC) which is the Australian representative to the FAI, being the Air Sport Australia Confederation (ASAC). The appeal is made on behalf of the Australian Team Pilots at the 10<sup>th</sup> FAI WWGC.

In support of this Appeal, each Australian Team Pilot and the Australian Team Captain has signed a statutory declaration regarding the statements made in this Appeal. (Appendix 2)

## 5. The timeframe to make an appeal

The Appellant is appealing the Jury's decision made on 17 January 2020. This appeal will be received at FAI headquarters before 16 April 2020, which is within the 90 days requirement for Appeals time limits, as per Section 6.5.3 of the Sporting Code General Section.

## 6. Executive Summary

On the final day of the Championship the Championship Director imposed a penalty upon the Australian Team for "unsporting behaviour" for "illicitly hacking" the competition's data tracking system *G-Track Live*. The initial penalty applied required the Team Captain to issue an apology to the other Team Captains for this infringement.

This decision was the subject of a complaint by other competing teams and as a result a second decision was made by the Championship Director to issue a 250 point penalty to each Australian Team Pilot. This decision was supported by a faulty Jury process which issued a 225 point penalty to each of the nine Australian Team Pilots competing. This penalty had a significant effect on the final placing and the medals and the prizes awarded. The penalty was issued for "unsporting behaviour" due to an alleged breach of FAI Sporting Code General rules and Annex A.

### **Decision sought**

The first contention of this appeal is that no rules were broken, nor were the actions of the Australian team "unsporting", and therefore the initial penalty (and consequently any subsequent penalty) should not have been issued. The second contention is that no additional advantage was gained by the Australian Team Pilots because all competitors could use tracking data of equivalent advantage if they chose, and therefore the revised penalty should not have been issued.

The Australian Team Pilots are seeking due process to be followed regarding the penalty imposed and the protest lodged with due consideration of the facts of the case which has not occurred to date. Consequently, the Australian Team Pilots are seeking to have the penalty withdrawn and the championship medals awarded correctly.

### **The details of what occurred**

These are set out in this appeal document however the background is briefly as follows:

The dispute is entirely related to the use of tracking device data which shows the location and height of competing gliders during a race and the way in which that information is accessed and used. The technology relating to these devices has developed rapidly over the last five years and the International Gliding Commission which sets and controls the rules by which all world gliding championships are conducted has yet to introduce any rule to deal with the use of information from such devices despite lengthy debate on the subject over some years.

### **The alleged breach of the Rules**

The Australian Team did not have access to a Private OGN device (described in detail later) which is very costly to buy and which was used by some other teams. It therefore accessed the organisers "real time" information on its *G-Track Live* system which in turn led to the penalty by the International Jury.

In addition, Public OGN data was available to all teams and provided real time data within a limited area of 50-90 kms radius from the event airfield and Private OGN systems could also be used by any team with such resources which covered a wider area if not the entire task. These other devices track the FLARM device in each glider and provided the same if not better information than the organiser's *G-Track Live* device. The use of real time data from both the public and private OGN devices did not breach any rule.

### **Argument against the ruling**

It is generally accepted that Private OGN gives an advantage and their use is accepted at world championships and statements from the Chief Steward and Jury President confirm that it was accepted at this competition. The tracking data used by the Australian Team was of equivalent usefulness to Private OGN.

The initial penalty against the Australian Team was for how the data was accessed which led to the first penalty decision for the Australian Team Captain to apologise. The revised penalty imposed on the Australian Team Pilots was for the supposed advantage of being given that information.

The Australian Team used *G-Track Live* data to gain a comparable outcome to Private OGN, not an additional advantage. *G-Track Live* tracking data was used because the Australian Team did not have the resources to have Private OGN and it was expected that other Teams would be using Private OGN as has been done at past world championships.

Regardless of how the tracking data was accessed, the Pilots had no more advantage than the use of Private OGN real time tracking data which is accepted.

Therefore, a penalty for individual Pilots is not appropriate.

There was no "illicit hacking of any data". It was freely available. And there was no advantage compared to other tracking data that was accepted. As a result, it was inappropriate to define these actions as constituting "unsporting behaviour".

Therefore, the Australian Team Pilots are making this appeal.

## 7. Overview of a World Gliding Championships

International gliding competitions are held every two years, rotated and hosted by various countries.

The competition duration is generally held over 14 days. Daily task courses are set by the organisers (depending on the weather) ranging from around 300 kilometres to 600 kilometres or more.

There are different classes of competition and gliders. The number of gliders at an international competition range from around 50 to 100, sometimes more. Each competitor has a crew of one or more, and the teams have a team captain and other supporting crew, depending on resources.

### **Each Day**

Each day, the organisers of the competition set a task depending on weather, then a Team Captain briefing is held, then a pilots' briefing is held. All gliders are placed on the airfield in readiness for launching.

The gliders are launched by many tow planes, with the aim of having all gliders airborne within an hour. A start time is announced on the radio once all gliders in a class have established climbs (generally 20 minutes after the last glider has launched).

Unlike motor sport where a common start time is used, in glider racing each pilot chooses when is the optimum time to start after the start gate is declared open. Therefore, the time to start is the most strategically important part of the race. The information about the optimum start time is gained from observing other competitors' locations, and guidance from the team on the ground. Pilots generally try to start with other gliders because observing other gliders in the vicinity indicates whether they are in rising or sinking air or in a thermal.

Pilots fly the task individually but with communication and assistance from team members and the team captain and crew. Teams in a class often fly in close proximity for the whole task.

### **Instruments and Support**

All gliders are mandatorily fitted with FLARM devices for collision avoidance. The (now) secondary use of FLARM is to give location information and integrate into Open Glider Network (OGN) programs. (Appendix 11, page 2)

Some competitions (e.g. Australian National competitions and WWGC) provide dedicated tracking devices that use the cellular network. This is how the organiser's *G-Track Live* system works. The trackers do not provide 100% availability of data due to signal limitations, shielding in cockpits, and battery failures.

All gliders are fitted with advanced GPS moving map instruments. The GPS devices produce a file (IGC FILE) that produces a trace of the flight using 1-4 second interval data points, evidence of rounding race turnpoints, heights, airspace compliance, start line and start time, and finish time. These instruments can display other valuable information such as weather, FLARM information and team locations, etc.

### **Tracking data**

Tracking data is information about the location and climb rates of gliders. Tactical use can be made of real time tracking data. This is an accepted part of gliding competitions. The most common source of tracking data is FLARM and all pilots have instruments in the cockpit that display FLARM tracking information. The limitation on FLARM display is the range which is about 30km. The other common form of tracking data is OGN. Public OGNs also provide real time information but have a greater range than FLARM display. The Lake Keepit range was 50-90 km. Private OGN provides the same real time data but can cover the whole task area. Private OGN is equivalent in the type and range of information to that provided by *G-Track Live* real time data provided the latter's trackers are working. Each day several were not working for a variety of reasons.

### **Scoring**

The IGC files are submitted to the scorer within (generally) 30 minutes of landing and loaded into the scoring program. The scoring program calculates all flight traces and allocates 1000 points to the fastest pilot. All other pilots are awarded a proportion of 1000 points, depending on their speed relative to the winner's speed. When most of the pilots in a class fly most of the task together, the spread of points between winner and next places is often very close.

### **Communications**

Each team is allocated a team radio frequency. Communications between the support team on the ground and competitors is allowed, as is competitor-to-competitor information and communication.



## 8. Background of the events

### 8.1. The Penalty

The following is a list of sequential events around the investigation of the use of tactical tracking data and subsequent penalty imposed upon the Australian Team Pilots:

Time	Summary Action	Detail
Thursday 16 January 2020		
3:03pm	The Competition Director sent the following message to all Team Captains via WhatsApp alerting to a rule breach.	“We have just become aware that someone has accessed live tracking data from the official tracking system - during the tasks. If we discover that it was a competition team we will consider it unsporting behaviour per Section 6 of FAI Sporting Code General Section. We will continue our investigations and advise once we have identified those involved. CD” (Appendix 29)
7:04pm	The Australian Team Captain met with the Chief Steward, Championship Director and Deputy Director. They asked how the Australian Team crew had been getting the information they had been sending to the pilots.	<p>The Australian Team Captain advised that the Australian Coach had access to the G-Track Live Tracking data. The Australian Team Captain explained the Australian Coach had found the live data freely available, without password protection, on the competition tracking web site and as there were no rules against using such freely available data, the Australian Coach decided to use it.</p> <p>In the meeting, the Chief Steward was extremely angry, and the Deputy Director said the Australian team had illicitly accessed the data. It was alleged the Australian Team had hacked the data. The Australian Team Captain objected to the <b>assumption</b> of hacking and illicit use of data and reinforced that Australia had legal access to the data and no competition rules were broken. The contest organisers said the Australian Team Captain would need to explain to the other Team Captains in the morning, which the Australian Team Captain agreed to.</p>
Friday 17 January 2020		
7:25am	The Championship Director advised the Team Captains there would be a Team Captains meeting at	see Appendix 29, page 26

Time	Summary Action	Detail
	9am, via WhatsApp message.	
9:00am	<p>The Team Captains' meeting took place in the competition office.</p> <p>The Deputy Director announced an initial penalty which stated that <i>"The use of the data gained illicitly is considered by us to be unsporting behaviour"</i>.</p>	<p>Attendees were Team Captains from USA, GBR, France, Germany, Czech Republic, Poland, Japan, Luxembourg, Italy, Australia, Chief Steward, Championship Director and Deputy Director. At the meeting the Deputy Director commenced by saying that Australia had illicitly accessed and used the live tracking data.</p> <p>The Competition Director explained that the organisation had been advised that someone had <i>hacked</i> the data in Estonia. The Australian Team Captain was then asked to explain what they had done. The Australian Team Captain apologised to the other Team Captains and stated that Australia had not hacked or accessed the data illicitly and then attempted to explain the actions taken. Given the manner of the meeting introduction which had introduced misinformation regarding the nature of data access, it was a very emotional environment. It seemed that by that stage, no-one was prepared to listen to the facts of the matter.</p>
9:57am	The Deputy Director sent the following message to all Team Captains via WhatsApp notifying of Unsporting Behaviour.	<p>"The Decision: The use of the data gained illicitly is considered by us to be unsporting behaviour. We believe the pilots were not aware of the illicit nature of the data and so will not be sanctioning the Australian Pilots. The actions available to us is to require the Australian Team Captain to make a public apology to the Organisation, the Team Captains and the IGC. Further to refer the matter to the IGC and GFA. As discussed, you have until 2pm to appeal/protest this decision." (Appendix 29)</p>
9:49am	<p>The British Team Captain called a team Captains' meeting for 10:30am without the Australian Team Captain.</p> <p>The Jury President and Deputy Director also attended this meeting.</p>	<p>WhatsApp Message stated:            "17/1/20, 9:49 am - +44 7813 788614: Unofficial TCs meeting 10:30 flight office"            (Appendix 29)</p>

Time	Summary Action	Detail
10:30am	The Australian Coach and one of the Australian Team Pilots (Lisa Turner) met with the Championship Director, Deputy Director, Chief Steward and <i>G-Track Live</i> Administrator. The Scorer, Peter Temple, was also observing.	Meeting was held to demonstrate how the data was legally accessed through the web page.  The immediate response of the Deputy Director was that the organisation had been naïve [presumably as to how easily the data was accessed].
11:27am	The USA team Captain lodged a complaint on behalf of the other Team Captains at 11:47am demanding a penalty for the Australian Team Pilots.	WhatsApp Message: 17/1/20, 11:27 am – John Good. USA TC. +1 (814) 207-9014: “To: Mandy Temple, WWGC Championship Director. From: Team Captains for USA, Germany, Poland, Italy, Luxembourg, Japan, UK, France, Czech Republic. Subject: Complaint regarding your decision of 17 Jan 2020 at 09:57, regarding the matter of the Australian team using GFA tracking data. We concur with your decision that the use of data gained illicitly is unsporting behavior [sic]. We disagree that the pilots who benefited from this information should escape sanction. The reason given for this is that you believe the pilots were not aware of the illicit nature of the data. We believe the pilots must necessarily have known that they were receiving real-time tracking data of considerable tactical value, information almost certainly not available to other teams. We further believe that a lack of knowledge of the exact sources of this data is not sufficient to avoid sanction for its use. The use of the competition’s own data by the home team in a manner and with knowledge that was not available to other teams is both unsporting behavior [sic] (as you have stated) and unquestionably brings the FAI into disrepute (reference Sporting Code General Section 6.2.2), therefore the penalties given do not reflect the gravity and scale of the offence, and the damage this has done to our sport.” (Appendix 29)
12pm	The Championship Director and Deputy Director (and possibly the Chief Steward) invited the Australian Team Captain	They explained that there was pressure to impose a points penalty. They suggested that the penalty could be disqualification of the whole team to avoid multiple protests and then the decision could be left to the Jury. The Australian Team Captain did not agree to this offer and the meeting ended.

Time	Summary Action	Detail
	to meet in their car on the launch grid.	
12:42pm	The Championship Director convened a Team Captains' meeting (without the Australian Team Captain) on the launch grid and then announced a change to the penalty	The penalty was announced to all Team Captains (including Australia) via the following Whatsapp message: "We have considered the complaint received and new information this morning and reviewed our decision. We issue a penalty of 250pts to each Australian team pilot. CD" (Appendix 29)
Intervening period	Protests lodged by other Team Captains	Three Team Captains lodged subsequent protests in an attempt to change the penalty to "disqualification of the Australian Team". (see protests included in Jury Presidents report in Appendix 10)
2.30pm (prior to protest period closing)	The Australian Team Captain submitted a written protest in person, requesting the penalty be removed as the Australian Team Pilots were not unsporting and did not gain an unfair benefit	See Appendix 28 for a copy of the Australian Team protest.
5.50pm	The Australian Team Captain prepared to address the International Jury	A Jury meeting in accordance with the Rules did not occur. Only the Jury President attended hence there was no quorum (3 required). Any attempt by the Australian Team Captain to discuss the rules and show that none were broken, or explain how the data was legally obtained was ignored. The Jury President stated that she had attended the Team Captains meeting and was convinced that their claims were correct. At this time, the Jury President told the Australian Team Captain that the Australians had "broken the 15 minute requirement in Local Procedure rule 4.1.1".

Time	Summary Action	Detail
		<p>The Jury President referred to an email from the <i>G-Track Live</i> Administrator, which had not been provided to the Australian Team (Appendix 30). This email contained incorrect information and made assumptions regarding the actions of the Australian Team. The Australian Team Captain corrected those statements which he became aware of but it was obvious the Australian position was not given due consideration and the Jury President made no attempt to investigate and consider the detailed points raised.</p> <p>The Jury President stated that Private OGN is not allowed<sup>1</sup>, demonstrating her lack of understanding of the rules applying to the competition. The Australian Team Captain corrected this statement by saying that private and public OGN was permitted under the current rules and was sure other teams were using Private OGN at the competition.</p> <p>The detailed explanations of the differences and similarities of various forms of tracking appeared to be beyond the technical understanding of the Jury President. The overall impression was the Jury President determined the matter on the uninformed opinion of others rather than technical understanding of the case and the rules. The Australian Team believes an opportunity to have addressed and presented its case to the International Jury panel of three would have resulted in a clearer understanding of what occurred and a different outcome in response to the Australian protest with reinstatement of the Australian Team Pilots' competition points.</p>
	Jury process	<p>The Australian Team was advised subsequent to the event via the Jury President's report (Appendix 10) that Jury Member Max Stevens only made contact with the President via email and believed that the Australian Protest was valid. Jury Member Wojciech Scigala only spoke to the <i>G-Track Live</i> Administrator and then supported the President's position. It is clear from the Jury President's report the decision was based on many assumptions and not clear facts. This is discussed in more detail later in this appeal.</p>

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<sup>1</sup> This statement is also in contravention to the Chief Steward's view, as reported in the final Steward's Report Appendix 1 that private OGN is permitted

Time	Summary Action	Detail
9:45pm		A revised penalty of 225 points was issued to each Australian pilot following the Jury determination. No official response to the Australian Team protest was given at this time and no explanation was provided. There was no opportunity to investigate or understand the reasoning before the Closing Ceremony.
10:00pm	Closing Ceremony brought forward and held	Weather in the latter days of the competition was unsuitable for tasks. In the days leading up to the end of the competition, the Closing ceremony was rescheduled to the night of Friday 17 January to allow early arrangements for teams to leave. The scheduled Closing Ceremony was to be at 10:00am on 18 January. The consequence of this was that there was insufficient time for the Jury investigation and meeting; The two other Jury members were located overseas and not easily available.

## 8.2. Events and Actions following the Competition

Date	Detail
20 January	Email from the Championship Director to each Australian Team Pilot directly (not through the Team Captain but copied to the Chief Steward and Deputy Director) providing context for the penalty imposed. (Appendix 5)
20 January	Email from Jury President to the Australian Team Captain providing the Jury report in relation to the protest lodged by the Australian Team. (Appendix 8)
21 January	Email from the Championship Director to each Australian Team Pilot directly (not through the Team Captain but copied to the Chief Steward and Deputy Director) providing an alternate explanation of the regulatory context for the penalty imposed. (Appendix 5)

	The reasoning provided in this letter was different to that which was conveyed during the course of events on the last competition day (17 January) and also different to that contained within the Jury President's Report. (Appendix 10) The mixed messages further demonstrate that no one could identify a rule which was broken by the Australian Team
21 January	Email from Australian Team Captain to the International Jury requesting they reconsider the protest and follow due process. (Appendix 4)
22 January	Email from Jury President to Australian Team Captain advising they do not consider it necessary to re-consider the decision. The Jury President admits proper process was not followed in considering the matter and accepts responsibility in this. The Jury President advises she was present when the other Team Captains were reacting to the matter (which is contrary to the Jury guidelines) and considers the actions of the Australian Team a breach of the rules, was unfair and a tactical advantage whilst not clearly stating which rules were breached. (Appendix 7)
28 January	Email from the Chief Steward to the members of the Board of the Australian Gliding Federation warning the Australians not to appeal the decision of the penalty at the championship, suggesting consequences for future Australian events. See Section 10.4 for more information on this. (Appendix 17)

### 8.3. Summary of key events

- Friday 17 Jan 9:00am - A Team Captains' meeting took place in the competition office and the Deputy Director announced a penalty which stated that "The use of the data gained illicitly is considered by us to be unsporting behaviour";
- Friday 17 Jan 9:57am - The decision for a penalty which explained that the Australian Team Pilots would not be sanctioned and the Australian Team Captain was required to make apologies;
- Friday 17 Jan 11:47am - The USA Team Captain lodged a complaint on behalf of the other Team Captains demanding a penalty for the Australian Pilots;
- Friday 17 Jan 12:42pm - The Championship Director convened a Team Captains' meeting (without the Australian Team Captain) on the launch grid and then announced a change to the penalty to issue a 250 points penalty to each Australian Team Pilot;
- Friday 17 Jan 2.30pm - The Australian Team Captain submitted a protest via email in order to have the penalty removed as the Australian Team Pilots did not obtain an unfair benefit, were not unsporting and did not breach any rules of the championship;
- Friday 17 Jan 9:45pm - A revised penalty of 225 points was issued to each Australian pilot following the Jury determination;
- Friday 17 Jan 10:00pm – Closing Ceremony brought forward and held. Championship medals were awarded after the International Jury failed to follow proper process and failed to consider the merits of the Australian Team protest;
- Tuesday 21 Jan - Email from Australian Team Captain to the International Jury requesting they follow proper process and reconsider the protest;
- Wednesday 22 Jan – Email from the Jury President to the Australian Team Captain admitting proper process was not followed by the Jury, the Jury President did not remove herself from preliminary matters leading to the penalty and failing to articulate which rules were broken by the Australian Team; and
- Tuesday 28 Jan - Email from the Chief Steward to the members of the Board of the Australian Gliding Federation warning the Australians not to appeal the decision of the penalty at the championship, suggesting consequences for future Australian events.



## 9. Competition Rules

### 9.1. Rules that Applied to this Championship

The rules that applied to this championship are listed below in descending order of hierarchy:

- FAI SPORTING CODE, GENERAL SECTION, 2020 Edition, Effective 1st January 2020, Approved by the Air Sport General Commission, December 6, 2019, Ver. 1.1 (Appendix 14);
- Annex A to Section 3 – Gliding, RULES FOR WORLD AND CONTINENTAL GLIDING CHAMPIONSHIPS, CLASS D (gliders) Including Class DM (motorgliders), 2019 Edition, valid from 7 October 2019 (Appendix 15); and
- Local Procedures WWGC 2019 V9.1 (Appendix 16).

### 9.2. Background IGC considerations of rules regarding tracking

Since the introduction of FLARM as a safety warning device in 2004, pilots have been using it to gather data on their competitors. With the introduction of the Open Glider Network (OGN) which collects FLARM data, and then makes the information available for others to use, such as displaying on a website, ground crew have been monitoring progress of all competitors and passing on information to their pilots. There are settings in FLARM that permit pilots to select “no tracking” so that their information is not displayed on the web site, which is respected by Public OGN. To overcome this teams installed their own Private OGN stations which ignore this privacy setting protocol allowing the owner of the Private OGN stations to see all gliders irrespective of the pilot settings used. Consequently, pilots started to switch off their FLARMs when they didn’t want to be tracked which also removed the safety/anti-collision benefit. Rules were then introduced to require pilots to have their FLARM on at all times for safety purposes.

The wealthy teams have previously invested many Euro in building Private OGN stations and have used these regularly, giving them an advantage over the less well-resourced teams. Subsequent development and extension of the public OGN has made this previous investment less relevant in some European countries. Even so, Private OGN continues to have tactical value because it bypasses the “no tracking” mode on Public OGN and in so doing makes all gliders visible.

Questions were asked at IGC meetings over many years to encourage some action on this issue, but no agreement could be made and the practice of using OGN continued.

#### **2016 Annex A**

The first time a rule regarding FLARM was inserted into Annex A was in 2016 where rule 5.4.2 (see below) was included in an attempt to stop pilots from turning off their FLARMs or blocking the antenna so as to avoid being tracked, which in turn rendered the FLARM ineffective as a safety device – its primary purpose. These rules were used in 2017 (Appendix 25) and 2018 with no changes regarding tracking and still exist in 2019. Historically any breach of this rule of tampering with FLARM reception or other in cockpit equipment has typically only been a warning. The impact of these rules was to encourage real time tracking of pilots and the ground-based teams were providing information from the public or private OGN to their pilots.

“Rule 5.4.2 Penalties may be imposed by the Organisers for unauthorized interference with the GNSS equipment, data or internal program, or Tracking equipment”

### **2018 IGC Plenary**

The February 2018 IGC plenary meeting had an agenda item – “Strategic Discussion on use of real time tracking”, See page 12/13 of the 2018 IGC meeting (Appendix 21). The discussion did not resolve the issue but identified that IGC has to either stop the use of real time tracking (which is almost impossible) or accept it cannot be policed effectively and change the rules to adapt to the use of tracking (i.e. by changing the rules of the race such that the tactical benefit of tracking is reduced). It was already evident wealthy teams with the funds to develop OGN equipment had an advantage over those which did not have OGN equipment.

### **2018 WGC rules**

The July 2018 world championships in Poland and Czech Republic had Local Procedures 4.1.1c that required teams to register their FLARM on the OGN which supported the practice of real time tracking as they could no longer hide their signal. This enabled all teams to use real time tracking

“4.1.1c, d. Mandatory additional equipment:

e) FLARM: Pilots must have their FLARM registered on the OGN with the name and contest number being the same as the pilot and CN in the championships. Pilots must not turn off or in any other way restrict the performance of their FLARM.”

### **2019 IGC Plenary**

The 2019 IGC plenary meeting saw a number of rules proposed and discussed, some attempting to limit the use of real time tracking and others to remove the benefit of tracking by changing the start rules.

Rules specific to tracking were proposed in rule 8.1.8 from Germany that proposed to prohibit Private OGN that do not honour the no track setting, and proposed rule 8.3.4 from GBR that requires organisers to provide a secure data source to enable live tracking with time delay. See Summary decisions from 2019 Plenary meeting and the actual proposals 8.1.8 and 8.3.4 in (Appendix 22). Both of these rules were adopted with immediate effect, but as advised by Mr Rick Sheppe Chair of the Annex A committee, both rules were removed from the 2019 edition of the rules by the IGC Bureau prior to the 10th WWGC.

See proposed tracking rule (withdrawn). (Appendix 24) Note that Brian Spreckley is the 1st VP of IGC and this was an IGC bureau response. The statement that “I can't see which proposal leads to a rule banning use of tracking for tactical purposes” indicates an IGC bureau decision not to limit tactical tracking. This is reinforced by the Chief Steward (also an IGC Bureau member) who in her final report states “the thought was, the AUS TC admits he has a Private OGN network and the competition could go on without a further discussion” which reinforces the IGC bureau view that real time tactical tracking is allowed. The statement also shows the acceptance that Private OGNs are in use and that access to that real time data, including data which the glider has set to “no tracking” is permitted. The only logical conclusion from all of this is that pilot use of real time tracking data is permissible.

## 2019 Local Procedures

### “4.1.1.c Carriage of GNSS data transmitters for public displays

The organizers will require competing sailplanes to carry GNSS data transmitters to enable the public display of GNSS flight records during competition flights. Such display will not begin before the start line is opened and the actual positions of the sailplanes shall be displayed with a time delay of at least 15 minutes. This delay may be reduced to zero prior the finish.”

This rule is a requirement on pilots to carry the trackers and for the organisers to provide a public display with a time delay. The 2019 Local Procedures did not include any rule banning pilots from using real time tracking data, from any source.

The penalties available are outlined in section 11.4 of this appeal. It is important to highlight that at this and previous championships other forms of real time tracking data have been available to teams (such as FLARM, Flight radar 24, transponder tracking and other forms of GPS tracking) without penalty. Further, the rate of adoption, and access of this technology and data, has been staggered and variable between competing teams. Again, without penalty.

## 9.3. Summary of background IGC considerations of rules regarding tracking

- Since the introduction of FLARM as a safety warning device in 2004, pilots have been using it to gather data on their competitors. With the introduction of the Open Glider Network which collects FLARM data, and then makes the information available for others to use, such as displaying on a web site, ground crew have been monitoring progress of all competitors and passing on information to their pilots;
- Questions were asked at IGC meetings over many years to encourage some action on this issue, but no agreement could be made and the practice continued;
- The February 2018 IGC plenary meeting discussed the use of real time tracking and did not resolve the issue;
- The July 2018 world championships in Poland and Czech Republic had Local Procedures that required teams to register their FLARM on the OGN which supported the practice of real time tracking as they could no longer hide their signal. This enabled all teams to use real time tracking;
- The 2019 IGC plenary meeting saw a number of rules discussed, some attempting to limit the use of real time tracking and others to remove the benefit of tracking by changing the start rules. Two rules were adopted with immediate effect, but both rules were removed from the 2019 draft edition of the rules by the IGC Bureau prior to the 10<sup>th</sup> WWGC;
- It is reasonable to believe that pilot use of real time tracking data is permissible given statements by organisation officials that Private OGN is acceptable and IGC deliberations not resulting in prohibiting the use of tracking data;
- A rule in the Local Procedures referred to the requirement for the organisers to display the gliders with a 15 minute delay, but did not prohibit the use by pilots of real time data; and
- It must be concluded that given the history of the rules in place in previous championships, which are the same as the 10<sup>th</sup> WWGC regarding tracking, the same level of acceptance of use of real time tracking data at those previous championships must be applied at the 10<sup>th</sup> WWGC. That is, real time tracking data is accepted regardless of the source.

#### 9.4. Rules in place at the time of the WWGC

In 2019, Annex A (Appendix 15) was issued as a latest revision and there was no change made in regard to tracking or its data. Also, section 5.4.2 remained un-changed.

The current rules regarding penalties relevant to this appeal (which are amended from 2017 and included in the 2018 version) are:

##### “8.6 PENALTIES AND DISQUALIFICATION

8.6.1 The Championship Director shall impose penalties for infringement of, or noncompliance with, any Rule or Local Procedure. The severity of the penalties ranges from a minimum of a warning to disqualification as appropriate for the offence. The penalties imposed by the Championship Director shall be in accordance with the appropriate list of penalties stated in Section 8.7 below.

8.6.2 The Championship Director may issue one or more general warnings regarding infringements described in this Annex to all competitors at Briefing. A general warning is in effect for that competition day, and it revokes each competitor’s right to a specific warning during that day. A general warning takes the place of a “first offence” warning, and a violation of a rule covered by a general warning should result in a penalty, as if the violation were a “subsequent offence.”

“8.6.3 Offences not covered by this list may be penalized at the Championship Director’s discretion in accordance with the provisions of the Sporting Code, General Section 6.2.”

“8.6.4 Penalties shall be listed on the Score sheet of the Day on which the penalty was given.”

##### “8.6.5 Unsporting Behaviour

- a) Championship pilots and team members who demonstrate aggressive and abusive behaviour to championships Organisers and/or FAI/IGC officials will be sanctioned for unsporting behaviour.
- b) The Championship Director will issue a penalty for unsporting behaviour, the size of the penalty dependent on the level of aggression and/or abuse demonstrated. The penalty imposed may be a warning, issuing of championship penalty points, day disqualification or event disqualification.
- c) Other team members (Team Captains, crew and other members) who demonstrate unsporting behaviour may incur a penalty ranging from being required to make a public apology to removal from the event.
- d) Very serious examples will be referred to the NAC involved and/or IGC/FAI.”

In relation to 8.6.5 Unsporting Behaviour, the subsections should be read in descending order which clearly reads that unsporting behaviour as included in the rule is only in relation to *pilots and team members who demonstrate aggressive and abusive behaviour to championships Organisers and/or FAI/IGC officials*. This is the case for subsections a), b), and c). There is no ability for the Championship Director or International Jury to expand the application of 8.6.5 to include behaviour which is not related to aggressive or abusive behaviour. The Australian Team is not accused of, nor did it demonstrate, aggressive or abusive behaviour therefore 8.6.5 cannot apply.

**The conclusion drawn from the rules in place at the 10<sup>th</sup> WWGC is that no rule was broken by the Australian Team and therefore no penalty can be applied.**

## 10. Proper Process not followed

For the purposes of the section below, the Appellant acknowledges the protest was made within the protest period and was emailed to the Jury President by the Championship Director without delay, as detailed in 9.2.4 and 9.2 of Annex A, although the email transmission appears to have been delayed by two hours.

The Australian Team Protest was lodged with the Championship Director at 2.30pm. **However, proper process was then not followed.**

### 10.1. Process Analysis

Proper process outlined in competition rules	What actually occurred
<p>FAI Jury Guidelines 2020 Edition (Appendix 12) Section 4 Jury duties during the event. 4.1 General Observation Jurors may get involved in the running of the event in administrative or practical matters during the event as long as that assistance does not involve matters that could potentially be the subject of a protest or have influence on the results of the competition.</p>	<p>The Jury President was present at the second Team Captains meeting (which did not include the Australian Team Captain) on the morning of Friday 17 January 2020 at 10:30am after the Championship Director misinformed the Team Captains that <i>“Australia had illicitly accessed and used the live tracking data. The Competition Director explained that the organisation had been advised that someone had hacked the data in Estonia.”</i> The Jury President should not have been in attendance at a meeting which could lead to a complaint, penalty or possible protest.</p> <p>A remote Jury Member was in email communication with the <i>G-Track Live</i> Administrator from as early as 10.17am on Friday 17 January (see Appendix 30 and 31). The information within these emails contained false assumptions which were not investigated thoroughly by the Jury (see further detail below). Of even greater significance is the influence this early, incorrect information had on the minds of the Jury members.</p>
<p>9.1.4 Annex A A complaint must be made in writing.  The Championship Director will issue a written response as soon as possible.</p>	<p>The Australian Team was not provided with a copy of any written complaint made (by the Team Captain for USA) regarding the penalty imposed, other than the WhatsApp advice. There was a report that the USA Team Captain had subsequently emailed his complaint but if this is correct, the Australian Team Captain was never provided with a copy.</p>

Proper process outlined in competition rules	What actually occurred
	<p>The Championship Director did not issue the Australian Team with a written response in regard to the complaint made by the USA Team Captain.</p> <p>A Penalty was imposed against each Australian Team Pilot. No explanation of the rule broken was given to the Australian Team. No written response was made or provided to the Australian Team.</p>
<p>9.3.a Annex A</p> <p>On the last contest day, the President of the Jury shall call a meeting of the International Jury as soon as possible. The International Jury Quorum shall be 3.</p>	<p>No meeting of the 3 members of the International Jury took place.</p> <p>A Quorum was not formed.</p>
<p>9.3.b Annex A</p> <p>The Jury shall hear both sides of any protest, applying correctly the relevant FAI Regulations and the Rules for the Championships. In considering the protest the Jury shall be provided with access to all persons and information to assist in their considerations.</p> <p>6.4.2 General Section</p> <p>The Jury shall hear both sides on the matter of any protest, applying the relevant FAI regulations and the rules for the event</p>	<p>The Australian Team Captain was requested to meet with the President of the Jury 4.5 hours after the protest was lodged. One member of the Australian Team accompanied the Australian Team Captain.</p> <p>The meeting was an informal conversation with only the Jury President.</p> <p>No other Jurors participated (apparently, they were not responding to phone calls or emails).</p> <p>No alternative Jurors participated.</p> <p>The President of the Jury had information provided by the <i>G-Track Live</i> Administrator which contained assumptions and was factually incorrect. The Australian Team were permitted to read this information on the Jury President's computer but, despite requests, the Australian Team was not provided with a copy of this information.</p> <p>The Australian Team was afforded no opportunity to formally respond or correct this information in writing or in person.</p> <p>The Australian Team was not afforded an opportunity to explain its case verbally to the full Jury.</p> <p>The Jury President referred to protests also lodged by other competing teams requesting a higher penalty - the Australian Team was not provided with any substantive information regarding them or copies of these other protests.</p>

Proper process outlined in competition rules	What actually occurred
	<p>No analysis was completed by the Jury regarding the validity of the protest. The Jury did not investigate clear statements of assumption provided by the <i>G-Track Live</i> Administrator or the remote advisor called upon, Angel Casado (Appendix 10). Technologies were not compared, nor was the level of assumed advantage analysed.</p>
<p>2.2.2 Annex A A nominated Jury shall consist of the President of the Jury plus two Members. The Jury President shall be appointed by the IGC. Both Members shall normally be appointed by the IGC, except that, in exceptional circumstances, the President may be empowered to appoint one Member, in consultation with the President of the IGC, from amongst persons present at an event. One or both members may be absent from the event provided: (i) They are available as required by the Jury President to hear a protest, and (ii) They are available on the final day of competition to hear any protests arising from the last day of competition, and to take part in the final Jury Meeting to confirm the results.</p>	<p>The International Members of the Jury not present at the competition were: <i>not</i> available on the final day of competition to hear any protests arising from the last day of competition, and <i>not</i> available to take part in the final Jury Meeting to confirm the results.</p>
<p>6.4.3 General Section The President of the Jury shall report the result and a summary of any relevant considerations in writing to the Event Director without delay, who shall make public the President's report.</p>	<p>The Jury President made a determination on the protest lodged by the Australian Team. A short version of the Jury response to the other teams was posted on WhatsApp on the morning of 20 Jan, 2 days after the closing ceremony. The response to the Australian Team Captain was also posted on WhatsApp and emailed on the evening of 20 Jan. This Jury Report was provided to the Australian Team Pilots directly by the Championship Director, it has not been made public by the Championship Director. The Jury President's report does not contain an explanation of what competition rule the Australian Team Pilots breached or, how the pilots' behaviour was deemed unsporting. The Jury President's report assumes the pilots</p>

Proper process outlined in competition rules	What actually occurred
	had an unsporting (unfair) advantage but does not articulate what that advantage was, nor does it provide any verified analysis to support the conclusion.

### 10.2. Summary of errors made in the penalty and appeal process

- The Jury President was present at the Team Captains’ meeting on the morning of Friday 17 January 2020, hearing the emotive reactions from Team Captains yet without correct factual explanation of what occurred;
- The initial complaint from the Team Captain for the USA was not provided formally in writing to the Australian Team, only indicated via WhatsApp;
- No written explanation was provided by the Championship Director to the Australian Team Captain or Pilots for the penalty points imposed;
- The full International Jury did not meet as a group to discuss and consider the protest. Decisions were based on incorrect assumptions. No objective analysis was completed;
- The Australian Team was not afforded the opportunity to verbally address the full International Jury regarding the protest;
- The International Jury did not investigate or interrogate the facts provided to them by either the contest organisers or the Australian Team. Some of the facts provided by the contest organisers were incorrect and this was misleading and influenced the Jury President’s decision on the protest;
- The Jury President made a determination of the protest without providing a written report, this was not published and the contest was closed and championship medals awarded without this in place; and
- The Jury did not comply with elements of a Jury process that are fundamental to making a fair determination

### 10.3. Factors contributing to lack of due process of the penalty determination

- The Championship Director had moved the closing ceremony and prizegiving forward from 10am on Saturday 18 January 2020 to the evening of Friday 17 January. This was to accommodate an early departure for competing pilots and their crews following a number of flying days cancelled due to adverse weather conditions;
- It was clear that the Jury President was under time pressure to resolve the protest to accommodate this earlier timeframe. This subsequent time pressure contributed to the Jury President determining the matter without following the hearing process in 9.3 of Annex A;
- The Jury President had difficulty contacting the International Jury members at short notice, in different time zones. [Annex A, 2.2.2 (ii) requires them to be available] This compounded with the time pressure noted above, contributed to the lack of a hearing at which the Australian Team could address the full Jury;
- There was no apparent analysis or investigation completed as part of the Jury consideration; and
- The Jury President and the Championship Director were under the belief that the changes proposed to Annex A to the IGC Plenary in 2019 regarding tracking were in place and were part of the rules for this event (Appendix 5). The approved version of



Annex A in place for this event did not include such rules. There was therefore a bias towards their belief as to what the rules should have been.

### 10.4. Improper process post competition

After the competition the Chief Steward (who is also a Vice President of the IGC) wrote to the members of the Board of the Australian Gliding Federation warning the Australians not to appeal the decision of the penalty at the Championship. This email alluded that if the Australians appealed, then pressure would be applied for the Australian team to be disqualified from the competition, or Australian pilots could be banned from international competition for a future period, or a future World Gliding Championship to be held in Australia in January 2023 would be withdrawn from Australia. The email is included in (Appendix 17) This pressure could be viewed as lobbying at best and bullying at worst. Such interference in the FAI Appeal process is unacceptable.

### 10.5. Conclusions regarding failure to follow proper process

It is obvious proper process was not followed at any stage of this matter, from initial suspicions and investigations by the Championship Director to communication with all Team Captains and the complete failure of the International Jury process which is designed as the backstop to protect all parties when other processes have failed. Had proper process been followed, the matter would have been investigated on facts and merits and the Australian Team is confident a different outcome with no penalty to the Australian Team Pilots would have resulted.

It is also clear there is international reluctance to review this matter and not address the process of awarding championship medals and prizes to the correct pilots. The Australian Team understands this and considers it most unfortunate for the re-awarding of medals and prizes to have to occur and regret the consequences this will have to those impacted pilots. In deciding this Appeal, the Australian Team asks the Appeal Tribunal to consider the current position of the Australian Team Pilots who have been wrongly accused and denied championship medals as a consequence of the failure of proper process at every stage.

## 11. The Appellant's arguments against the Ruling

The first two parts of this section describe rules that might be relevant to the penalty and what penalties were issued by the Championship Director. Then the arguments are put against the ruling by considering the questions of 'whether unsporting behaviour occurred at all' and 'if a points penalty for supposed unfair advantage was appropriate'?

### 11.1. What rules did the penalty relate to?

There were no published rules or Local Procedures broken by Australian Team members. The relevant rules that have been referred to by competition officials include the following:

- FAI Sporting Code General (Appendix 14)
  - 6.2.2: Unsporting Behaviour (including, but not limited to, cheating or unsporting behaviour, including deliberate attempts to deceive or mislead officials, bringing FAI into disrepute, wilful interference with other competitors, falsification of documents,

use of forbidden equipment and prohibited drugs and violations of airspace) at the discretion of the ASC concerned.

- Annex A, 8.6.5 Unsporting Behaviour (Appendix 15)
  - a. Championship pilots and team members who demonstrate aggressive and abusive behaviour to championships Organisers and/or FAI/IGC officials will be sanctioned for unsporting behaviour.
  - b. The Championship Director will issue a penalty for unsporting behaviour, the size of the penalty dependent on the level of aggression and/or abuse demonstrated. The penalty imposed may be a warning, issuing of championship penalty points, day disqualification or event disqualification.
  - c. Other team members (Team Captains, crew and other members) who demonstrate unsporting behaviour may incur a penalty ranging from being required to make a public apology to removal from the event.
  - d. Very serious examples will be referred to the NAC involved and/or IGC/FAI.
- Annex A, 5.4.2 (Appendix 15)
 

Penalties may be imposed by the Organisers for unauthorized interference with the GNSS equipment, data or internal program, or Tracking equipment.
- Local Procedures, 4.1.1.c Carriage of GNSS data transmitters for public displays (Appendix 16)
 

The organizers will require competing sailplanes to carry GNSS data transmitters to enable the public display of GNSS flight records during competition flights. Such display will not begin before the start line is opened and the actual positions of the sailplanes shall be displayed with a time delay of at least 15 minutes. This delay may be reduced to zero prior the finish.

### 11.2. What penalties were issued by the Championship Director?

Sequence of events	What occurred	Actual wording
9:57am 17 January 2020	Penalty – Apology to be made  An initial penalty was issued to the Australian Team Captain – The Championship Director explained via WhatsApp	<i>“The use of the data gained illicitly is considered by us to be unsporting behaviour. We believe the pilots were not aware of the illicit nature of the data and so will not be sanctioned the Australian Team. The actions available to us is to require the Australian Team Captain to make a public apology to the Organisation, the TCs and the IGC.”</i>
12:42pm 17 January 2020	250 Point Penalty  A revised penalty of 250 points was issued to each Australian pilot – in response to a complaint by the US Team Captain via WhatsApp	<i>“We concur with your decision that the use of data gained illicitly was unsporting behaviour. We disagree that the pilots who benefited from this information should escape sanction ...”.</i>

Sequence of events	What occurred	Actual wording
21:45 17 January 2020	225 Point Penalty  A revised penalty of 225 points was issued to each Australian Team Pilot following the International Jury determination.	No official written statement was provided at this time.

### 11.3. Did unsporting behaviour occur?

The published reason given by the Championship Director for the penalty is the allegation that data was gained illicitly from the *G-Track Live* system, which was considered to be unsporting behaviour.

#### Data was not gained illicitly from the *G-Track Live* system

The allegation data was gained illicitly is inaccurate because:

1. The information was legally accessed – the data was unprotected, and access was simple through the *G-Track Live* webpage and required little technical skill. (see video and explanation on access to the data in Appendix 20). The information on the *G-Track Live* page without the 15min delay was not password protected. No Australian law was broken in accessing the data;
2. The system was open to the public and the administrator of the tracking program was not the only one who could access the system. Nor is it unreasonable to assume that other Teams with basic IT skills could not have accessed the same information – unless the same information was available to them through Private OGN use and in which case there was no need;
3. The Australian Team Captain did not gain knowledge of how to access the data through unethical means as claimed by the Competition Director, such as looking over the shoulder of the *G-Track Live* administrator or getting information from the *G-Track Live* administrator as implied by the Jury report. The Team Captain had no interaction with the *G-Track Live* administrator in relation to the data tracking system; and
4. The Team Coach accessed the data in a way that any other Team with some basic IT knowledge could have accessed it.

#### There are no other grounds for claiming unsporting behaviour

When it became known that the data was not gained illicitly, as previously suggested by them, the Competition Organisation advanced other reasons for claiming that unsporting behaviour had occurred. Alternative reasons given for the penalty by the Championship Director, subsequent to the first penalty decision (being for unsporting behaviour for the use of illicitly gained data), were various and changing at the competition and post competition and did not refer specifically to any relevant or actual rule.

Their reasons are listed below with our counter-argument following:

Reason	Counter-argument
The Australian Team should have known of the IGC intent to prohibit tactical use of tracking data because of a recent proposed rule at an IGC Plenary.	Discussion regarding use of tracking technology has been ongoing since the adoption of FLARM.

Reason	Counter-argument
	<p>More recently, there was a proposal in 2019 for rules to go into Annex A to prohibit the tactical use of tracking data and consider it unsporting. These proposed rules related to use of real time tracking data from any source including public OGN. These proposed rules were deliberately removed from a draft of Annex A by the IGC bureau, were never published and did not exist at the time of the WWGC.</p> <p>All teams must compete within the rules published at the start of the competition. It is not reasonable or fair to expect pilots to have knowledge of, or in some way attempt to comply with, rules debated at Plenary meetings which have not been published or included in the competition rules.</p>
<p>Access to <i>G-Track Live</i> data potentially gave the Australian Team tactical information not available to other Teams and there was a consequent advantage.</p>	<p>All Teams had the opportunity to access real time data with equivalent tactical advantage from a range of sources including Private OGN.</p> <p>No investigation was made to determine if other teams were accessing tracking data or the same <i>G-Track Live</i> data. It was clearly capable to be found and used by other teams.</p>
<p>The data was sourced from a device that was mandated by the Organisation.</p>	<p>All pilots use tracking data from a number of mandated devices including FLARM and from their teams via radio.</p>
<p>The Australian Team should have known that use of live <i>G-Track Live</i> data was considered by the Organisation as unsporting because it was mentioned in the first Team Captains' meeting.</p>	<p>It has also been asserted that a reference made in a Team Captains' meeting to live tracking is reason for a penalty. The Championship Director might have made reference to either a rule about the organisation displaying tracking with a delay (Local Procedures, 4.1.1.c) or to a rule about the use of tracking data being prohibited (2019 Plenary meeting but not in Annex A) at the first Team Captains meeting. There are various versions of what was actually said.</p> <p>In any case, there was no rule prohibiting the use of real time tracking. In addition, no published ruling was made by an organiser relating to this matter. The purpose of published rules is to ensure a clear and common position of the rules is established and agreed, rather than rely on recollection and opinion which may differ between parties. The Australian Team Pilots were</p>

Reason	Counter-argument
	unaware of any discussion about this matter at IGC meetings or at the competition.
The <i>G-Track Live</i> Administrator suggested that possibly the Australian team was transmitting data via the web to pilots in the air. (Appendix 30)	<p>This is an assumption made which was not investigated by the Championship Director or the International Jury, thereby leaving the question in doubt and potentially influencing the decisions made regarding penalties.</p> <p>The Australian Team Pilots only received information regarding tactical tracking via the Australian radio frequency which is in accordance with the rules and to which all Teams had access to.</p>

On examination, the first three of the above reasons for unsporting behaviour can equally apply to tactical use of tracking data from any source. All teams had access to real time tracking data such as OGN and FLARM, so in applying this argument, all Teams should be subject to the same assessment of and potential penalty for unsporting behaviour.

**Tactical use of tracking data has been acceptable at international competitions**

There has been a clear culture of acceptance of tactical use of tracking data, as evidenced in recent overseas competitions. Within this context, it is reasonable for the Australian Team to view the use of tracking data from any source, including *G-Track Live*, as equally acceptable and correct.

1. For some years Teams have been making tactical use of real time tracking data from OGN which provide similar or equivalent tactical tracking information to *G-Track Live*;
2. The tactical use of tracking data has been accepted despite ongoing discussions over many years by IGC about potential advantage and rules to prohibit it which have never come to fruition;
3. The use of Private OGN is openly accepted as indicated by the IGC Steward Report for the 10th WWGC, a copy of which is in Appendix 1– “*It was assumed they had a private OGN network. ... The moment the thought was, the AUS TC admits he has a private OGN network the competition could go on without further discussion.*”;
4. At World Gliding Championships it is accepted that Team members support and assist pilots in any way possible within the rules. This includes the use of technology such as tactical use of tracking data; and
5. In regard to the rule: Annex A, 5.4.2, there was no claim of, or investigation into “unauthorized interference with the GNSS equipment, data or internal program, or Tracking equipment”, even though this rule was listed in a Jury Reply to a Protest (Appendix 10). This supports the position made above in section 10 that there was a lack of investigation into the facts of the case as well as a lack of due process in hearing the protest.

**For the reasons outlined above, there was no unsporting behaviour, no rule was broken and therefore no penalty should apply.**

**There were no other rules breached by any members of the Australian Team, therefore no penalty should apply.**

#### 11.4. Was the penalty issued appropriate?

The Appellant submits that issuing a penalty is inappropriate because the Australian Team Pilots did not demonstrate unsporting behaviour, nor did they obtain any relative advantage by their use of live tracking data.

##### 11.4.1. Process for applying penalty points and penalty points applied in this matter

###### Ability to apply a penalty:

- The ability to apply penalties is held by the Competition Director and found in:
  - Annex A 8.6 Penalties and Disqualifications; and
  - Annex A, 8.7 provides a List of Approved Penalties (Refer Annex A 8.6, page 38, and Annex A 8.7, page 39).
- The penalty of 225pts was applied to each Australian pilot, or 25pts for 9 days of the competitions (refer to Jury report dated 20<sup>th</sup> Jan 2020. (Appendix 10)

##### 11.4.2. No transparent process of points calculation

- The Championship Director is provided guidance regarding the penalty to be applied to particular infringements in Annex A 8.6 Penalties and Disqualifications.
- Penalties range from a warning with no infringement penalty points (e.g. Landing: incorrect landing lane) to zero points for the day (e.g. Flying under influence of alcohol – first offence). The Competition Director may also disqualify a competitor (e.g. Falsifying documents – first offence).
- The infringement of *Unsporting Behaviour* is defined by Annex A, 8.6.5 (b):  
*“The Championship Director will issue a penalty for unsporting behaviour, the size of the penalty dependent on the level of aggression and/or abuse demonstrated. The penalty imposed may be a warning, issuing of championship penalty points, day disqualification or event disqualification.”*
- The Australian Pilots and Australian Team were not aggressive or abusive and cooperated in all interactions with the Competition Director, Deputy Director, Steward and other relevant official parties.
- There was no explanation of the method used to calculate the penalty points applied in this matter (Appendix 6 Mandy WhatsApp message send 17/1/20, 12:42 pm; and Appendix 10).

##### 11.4.3. If a points penalty is appropriate then what should it have been?

- The penalty for dangerous flying is less than half of what was imposed for alleged unsporting behaviour being use of data gained illicitly. Dangerous flying is an action by a pilot that is reasonably expected to increase the risk of, or result in, a fatality:
  - 11th JWGC, Szeged/Hungary, competition pilot received 100pt penalty after being convicted of dangerous flying. Verified evidence of cloud flying (which is prohibited) was submitted. ([https://www.soaringspot.com/en\\_gb/11th-fai-junior-world-gliding-championships-szeged-2019/results/club/task-4-on-2019-08-01/daily](https://www.soaringspot.com/en_gb/11th-fai-junior-world-gliding-championships-szeged-2019/results/club/task-4-on-2019-08-01/daily)); and
  - 10<sup>th</sup> FAI Women’s World Gliding Championship, competing pilot received 100pt penalty after being convicted of dangerous flying. Verified evidence of intentional close proximity incursion requiring evasive action was submitted.

[https://www.soaringspot.com/en\\_gb/10th-fai-womens-world-gliding-championship-lake-keepit-2020/results/standard/task-1-on-2020-01-04/daily](https://www.soaringspot.com/en_gb/10th-fai-womens-world-gliding-championship-lake-keepit-2020/results/standard/task-1-on-2020-01-04/daily)

- A search of all known penalties, competition reports and results indicate that the penalty of Unsporting Behaviour has not been issued in gliding prior to this event.
- A penalty of Unsporting Behaviour was issued to a paraglider pilot for abuse of officials.
- Penalties issued of the scale and magnitude applied to the Australian Team Pilots are typically for variable actions of dangerous flying. In each case, the penalty resulted is less than half of that applied to each Australian Pilot.
- Access to tracking data has been available since the adoption of FLARM (circa 2004). The access and adoption of this technology has not been consistent between International teams during this history. At no point in the past has an International team been penalised for having access to a perceived technological advantage.
- A considerable number of penalties have been issued in recent competitions for pilots turning off, or not having their trackers available and visible. This penalty has typically been a warning and up to 10 points per occurrence.

Therefore, the penalty of 225 points applied for the use of tactical tracking data is substantially more than was imposed at the same competition for dangerous flying. Further, at no point has a penalty been imposed for the use of technology to date.

#### 11.4.4. Impact of the penalty on final medal positions

The result of 225 penalty points being applied to each Australian Team Pilot was that the Australian Pilot who was in first place in Club Class and the Australian Pilot who was in third place in Standard Class were no longer on the podium. The rankings for each class per country per and post application of penalty points are as follows:

Class	Pre-Penalty	Post Penalty
Club Class Gold	Australia	Italy
Club Class Silver	Italy	Germany
Club Class Bronze	Germany	France
Standard Class Gold	USA	USA
Standard Class Silver	France	France
Standard Class Bronze	Australia	United Kingdom
18m Class Gold	France	France
18m Class Silver	France	France
18m Class Bronze	Germany	Germany

Countries which submitted a protest requesting the application of penalty points included:

- United Kingdom
- Germany
- Luxembourg

**The penalty had a significant effect on the final placings, the medals and the prizes awarded.**

### 11.5. No Additional Advantage

The apparent logic for the points penalty was that the individual pilots gained an advantage over other pilots in using the *G-Track Live* tracking data. This would be true if other pilots could not access the same or similar data within the rules, but use of Private OGN real time tracking data is equivalent in terms of advantage and is well accepted and was permitted by the Competition Organisation.

During the process followed to impose penalties and subsequently that followed by the Jury, there has been no analysis of the relative coverage of the various tracking technologies available to competing teams.

Use of *G-Track Live* tracking data had no advantage over OGN in terms of the coverage of the task area. The difference between the area covered by VHF radio range, and thus ground crew ability to relay the information, and the Lake Keepit OGN is negligible (OGN and VHF coverage mapping Appendix 23). This suggests that the only tactical difference in usable tracking information between Lake Keepit OGN and *G-Track Live* tracking data is the identification information displayed.

Both *G-Track Live* tracking data and Private OGN provide real time identification information additional to the Lake Keepit OGN. There is an option to set “no tracking” on the OGN, this option was only taken up by the German Team. There is also an option to set random FLARM ID which was taken up by about 50% of the pilots in some classes and less in other classes (though these can be monitored and recorded manually).

The Lake Keepit OGN provided real time tracking to all the pilots and Private OGN could be used by Teams who chose to do so. All teams had ground crew relaying information about other gliders using tracking data. For example, one of the Australian Team Pilots spent three days on the US Team frequency (by invitation) and heard radio announcements from the US Team base regarding the start and on-track movements of other teams without any time delay.

**There was no practical difference between *G-Track Live* data and Lake Keepit OGN available to all pilots in terms of the task area covered. The type of information provided by *G-Track Live* offered no more advantage than Private OGN which was acceptable to the organisation and minimal advantage over Lake Keepit OGN.**

The Australian Team ground crew were able to offer the Australian Team Pilots information from a program which brought together a mix of data from *G-Track Live*, OGN and weather models. The mix of this information and the crew analysis of the information yielded the benefit rather than the raw data itself.

In addition, the pilots of all Teams had a substantial amount of valuable information available to them from their cockpit, to which the ground crew does not have access. For example:

- They can see the sky ahead, and where the energy lines are, where storms have been (no thermals), where storms are ahead;
- They can see where gliders ahead are climbing;
- And the FLARM display in the cockpit, originally intended for collision avoidance, is now capable of showing gliders 20-30 kilometres ahead, along with their individual climb rates;
- Once out of radio range from the Team base radio, the pilots used the more valuable information available from the cockpit as described above. The main value given by the Team base was for tactics pre-start and the Lake Keepit OGN real time



tracking was the source of data for this information. Also, the Lake Keepit OGN range was almost identical to the range of the team base radio.

The pilots report that they used this abundance of information most of the time and use of tracking information was mostly sought pre-start, when the Lake Keepit OGN real time data was also available. And even then, the pilots did not always get access to the information because of issues with the trackers such as battery failures, not being on the Australian radio frequency or having technical issues affecting use of the radio.

The use of Private OGN was acceptable to the competition officials and this would have provided live tracking over the entire task area. Vehicles of other teams were noted strategically leaving the airport each day after task setting, presumably to locate the Private OGN at the centre of the task for the day.

**In conclusion, there is no additional advantage of ground crew relaying *G-Track Live* data to that gained by Private OGN and the contribution of tracking data to the pilots' overall performance is a small part of the abundance of information available to all pilots from all teams, from the cockpit.**

### 11.6. Summary related to the penalty ruling

- There were no published rules or Local Procedures broken by Australian Team members;
- The Championship Director issued a penalty for unsporting behaviour based on the incorrect belief that tracking data was gained illicitly;
- The tracking data was accessed legally, access was not gained through deceptive means, and any other Team with basic IT knowledge could have accessed the same data;
- When it became known that the data was not gained illicitly, other reasons for unsporting behaviour were advanced;
- Many of the arguments given that tactical use of *G-Track Live* data was unsporting can equally apply to tactical use of tracking data from any source;
- Statements from the Chief Steward and Jury President say that the use of Private OGN, which provides equivalent advantage to use of *G-Track Live* tracking data, was acceptable;
- There has been an acceptance of tactical use of tracking data for some years and within this context it is not unsurprising that the use of *G-Track Live* data was viewed by the Australian Team as equally acceptable;
- Alternative reasons given for the penalty by the organisation, subsequent to the first penalty decision (being for unsporting behaviour for the use of illicitly gained data), were various and changing at the competition and post competition and did not refer specifically to any relevant or legitimate rule;
- There was no transparent process of penalty points calculation;
- The magnitude of the penalty is excessive for example being more than twice that imposed for dangerous flying;
- The penalty had a significant effect on the final placing and the medals and the prizes awarded;
- There was no difference between *G-Track Live* data and Lake Keepit OGN available to all pilots in terms of the task area covered and the type of information provided by *G-Track Live* offered no more advantage than Private OGN and minimal advantage over Lake Keepit OGN;

- There was no verified advantage in having access to *G-Track Live* data additional to other available tracking data or the many other sources of information available to all pilots; and
- The penalty should not have been issued at all because there was no unsporting behaviour nor was there unfair additional advantage.

## 12. Conclusions

Live tracking has proved to be the disrupter to the gliding community that Facebook, Amazon and Uber have been to the commercial world.

IGC has struggled with how to deal with its rapid development. Even after five years of debate no clear policy has been set for the sport. Ideas were debated, rules were agreed to, posted to the draft of the then Annex A rules, and then later removed. All of this has been progressively reported in gliding media and in reports to national organisations. It is no wonder that confusion has resulted.

The organisers and the Jury at the WWGC were all capable hard working people of goodwill, but the fact is that they did not understand the exact rules that applied in relation to tracking and all of their decisions were based upon the incorrect assumption that the rules of the competition contained the proposed IGC rule concerning the use of tracking data. They did not.

Further however, last day pressures to conclude the event plus mixed time zones caused the Jury review process to fatally break down.

### **Therefore, in relation to the Rules:**

- There was an accepted culture across the whole world of using tracking real time data in competitions. This use was not considered to be unsporting behaviour;
- Multiple versions of tracking data were available at this WWGC. Some of it was available to all teams and some was available to one or a handful of teams;
- Access to all of these versions was permitted under the rules under which the Championship was conducted;
- The data which the Australian Team had access to was no better, and arguably not as useful as the Private OGNs that could be used by some of the other teams;
- It was entirely inappropriate and incorrect that the Australian Team was accused of illicitly hacking data and then, as a result, of unsporting behaviour. It is the obligation of all pilots and team support people to comply with the rules but it is also their entitlement to use those rules to their best advantage. It is accepted practice that this occurs in all competitions;
- It is not “unsporting” to have discovered the use of a rule or material freely available that other teams have failed to discover; and
- At no stage did the Australian team “interfere” with equipment. It is therefore incorrect to conclude that the team breached rule 5.4.2 of Annex A.

### **And then in relation to the penalties:**

- The process set out by the rules for appeals was not followed by Jury;
- All decisions were based upon the incorrect assumption that the rules contained the proposed IGC rule concerning the use of tracking data;
- At no time was a proper quorum present in the meetings of the Jury;

- At no time was the Australian Team given the opportunity to present its arguments to the Jury; and
- As a consequence, the Championship medals and prizes were awarded incorrectly.

### 13. The requests made of the Appeal Tribunal

The nine Australian Team Pilots are requesting:

- A clear statement that the Jury process was not followed according to the rules governing the competition;
- A statement that the Australian Team Pilots did not participate in unsporting behaviour;
- The penalty of 225 points be removed against each pilot;
- To have the final placings of the championships returned to the position prior to imposition of the penalty;
- To have championship medals and prizes correctly awarded to the respective pilots; and
- A full refund of the appeal fee of \$3000 EUR.

## 14. Table of Appendices (attached Separately)

Appendix 1.....	WWGC IGC Steward Report, undated
Appendix 2 .....	Statutory Declarations
Appendix 3 .....	Not used
Appendix 4 .....	Email Australian Team Captain to Jury 2020-01-21
Appendix 5 .....	Email from Competition Director to WWGC Pilots 20&21 Jan
Appendix 6.....	Team Captains' Complaint WhatsApp Msg 17/1/20, 11:27 am
Appendix 7.....	Response from Jury to Australian Team Captain 2020-01-22
Appendix 8.....	Reply to the Protest against penalty applied to Australian Pilots
Appendix 9.....	Not used
Appendix 10.....	Jury reply to protest of Great Britain
Appendix 11.....	Gliding tracking technology
Appendix 12.....	FAI JURY GUIDELINES 2020 V1
Appendix 13.....	Not used
Appendix 14.....	FAI SPORTING CODE GENERAL SECTION, 2020 V1.1
Appendix 15.....	FAI Annex A to Section 3 – Gliding
Appendix 16.....	10th WWGC Local Procedures V9.1
Appendix 17.....	Emails between Frouwke Kuijpers and GFA President 28 Jan 2020
Appendix 18.....	PROPOSAL TO IGC PLENARY 2019
Appendix 19.....	IGC PROPOSAL 27 Dec 2018 -Proposal submitted by British Gliding Association
Appendix 20.....	<i>See attached file App 20, Getting the tracking information.mov</i>
Appendix 21.....	Minutes of the Annual Meeting of the FAI Gliding Commission (IGC) held in Freudenstadt, Friday 2nd and Saturday 3rd March 2018
Appendix 22.....	Decisions from IGC Plenary Meeting, Istanbul, 8th and 9th March 2019
Appendix 23.....	Open glider network (OGN) range
Appendix 24.....	Proposed Tracking rule but withdrawn
Appendix 25.....	FAI Annex A to Section 3 - Gliding 2017 edition
Appendix 26.....	Not used
Appendix 27.....	Tracking Rule as per Annex A - email
Appendix 28.....	Australian Protest against penalty
Appendix 29.....	WhatsApp Chat with Team Captains WWGC
Appendix 30.....	Email from Jacques Graells to Jury 17 March 2020
Appendix 31 .....	Earlier emails between Jacques Graells and Wojciech 17 March 2020