



## ARBITRATION

### SUMMARY OF ORDERS REQUESTED AND ARBITRATOR'S DECISION

Explanation of the term 'ultra vires' they are asking for it to be considered 'beyond the powers'. It is used to describe an act which requires legal authority or power but is then completed outside of or without the requisite authority. More bluntly that the committee acted without legal authority to do so.

The Claimants (WIMPEN) have requested the following Orders:

Order	Wimpen asked for	Arbitrator's decision
1	An order declaring that the decision bearing to be of the Respondent - which was communicated by letter dated 10 April 2017 from Albert Edward Joseph Fletcher ("Mr Fletcher") to Senor German Castro in his capacity as Managing Director of the First Claimant in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution to pass the following resolution: <i>"Wimpen, OnaGrup and associated companies and individuals which includes Mr Pengelly, Ms Oliphant, and employees are suspended from membership of the Club for a period of 6 months with immediate effect"</i> is ultra vires. The Annual General Meeting of Club Los Claveles which was held on 10 September 2017 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting.	The decision bearing to be of the Respondent - which was communicated by letter dated 10 April 2017 from Albert Edward Joseph Fletcher ("Mr Fletcher") to Senor German Castro in his capacity as Managing Director of the First Claimant - in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution to pass the following resolution: <i>"Wimpen, OnaGrup and associated companies and individuals which includes Mr Pengelly, Ms Oliphant, and employees are suspended from membership of the Club for a period of 6 months with immediate effect"</i> is ultra vires.  <b>Found in WimPen's favour</b>
2	An order declaring that the Special General Meeting of Club Los Claveles which was held on 22 April 2017 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting	The Special General Meeting of Club Los Claveles which was held on 22 April 2017 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting  <b>Found in WimPen's favour</b>
3	An order declaring that all and any resolutions which were voted on and passed at the Special General Meeting of Club Los Claveles held on 22 April 2017 are null and void.	All and any resolutions which were voted on and passed at the Special General Meeting of Club Los Claveles held on 22 April 2017 are null and void.  <b>Found in WimPen's favour</b>
4	An order declaring that the Annual General Meeting of Club Los Claveles which was held on 10 September 2017 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting.	The Annual General Meeting of Club Los Claveles which was held on 10 September 2017 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting.  <b>Found in WimPen's favour</b>

5	An order declaring that all and any resolutions voted on and passed at the Annual General Meeting of Club Los Claveles held on 10 September 2017 are null and void.	All and any resolutions voted on and passed at the Annual General Meeting of Club Los Claveles held on 10 September 2017 are null and void. <b>Found in WimPen's favour</b>
6	An order declaring that the decision bearing to be of the Respondent - which was communicated by letter dated 8 October 2017 from Mr Fletcher to Senor German Castro in his capacity as Managing Director of the First Claimant - in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution to pass the following resolution: "Wimpen, OnaGrup and associated companies and individuals which includes Mr Pengelly, Ms Oliphant, and employees are suspended from membership of the Club for a period of 12 months with immediate effect" is ultra vires.	The decision bearing to be of the Respondent - which was communicated by letter dated 8 October 2017 from Mr Fletcher to Senor German Castro in his capacity as Managing Director of the First Claimant - in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution to pass the following resolution: "Wimpen, OnaGrup and associated companies and individuals which includes Mr Pengelly, Ms Oliphant, and employees are suspended from membership of the Club for a period of 12 months with immediate effect" is ultra vires. <b>Found in WimPen's favour</b>
7	An order declaring that the decision bearing to be of the Respondent - which was communicated by letter dated 8 October 2017 from Mr Fletcher to Mr. Ivan Pengelly designated in this letter as an "employee or consultant of' the First Claimant and OnaGrup - in purported exercise of the Club Committee's powers under Clause 11.5.4 to suspend Mr. Pengelly's Membership of the Club until 7 October 2018 is ultra vires.	The decision bearing to be of the Respondent - which was communicated by letter dated 8 October 2017 from Mr Fletcher to Mr. Ivan Pengelly designated in this letter as an "employee or consultant of' the First Claimant and OnaGrup - in purported exercise of the Club Committee's powers under Clause 11.5.4 to suspend Mr. Pengelly's Membership of the Club until 7 October 2018 is ultra vires. <b>Found in WimPen's favour</b>
8	An order declaring that the decision bearing to be of the Respondent which was communicated by letter dated 8 October 2017 from Mr Fletcher to Ms. J Oliphant designated in this letter as "company secretary" of the First Claimant and OnaGrup - in purported exercise of the Club Committee's powers under Clause 11.5.4 to suspend Ms. Oliphant's Membership of the Club until 7 October 2018 is ultra vires.	The decision bearing to be of the Respondent - which was communicated by letter dated 8 October 2017 from Mr Fletcher to Ms. J Oliphant designated in this letter as "company secretary" of the First Claimant and OnaGrup - in purported exercise of the Club Committee's powers under Clause 11.5.4 to suspend Ms. Oliphant's Membership of the Club until 7 October 2018 is ultra vires. <b>Found in WimPen's favour</b>
9	An order declaring that the Annual General Meeting of Club Los Claveles which was held on 28 April 2018 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting.	The Annual General Meeting of Club Los Claveles which was held on 28 April 2018 was improperly convened and conducted such as to invalidate all and any business conducted at that meeting. <b>Found in WimPen's favour</b>
10	An order declaring that all and any resolutions which were voted on and passed at the Annual General Meeting of Club Los Claveles held on 28 April 2018 are null and void.	All and any resolutions which were voted on and passed at the Annual General Meeting of Club Los Claveles held on 28 April 2018 are null and void. <b>Found in WimPen's favour</b>
11	Declarator that the Club's Constitution of the Club Los Claveles remains the original Constitution dated 5 April 1990 as amended up to 2014.	The Club's Constitution of the Club Los Claveles remains the original Constitution dated 5 April 1990 as amended up to 2014. <b>Found in WimPen's favour</b>
12	Declarator that the subsequent purported amendments to the Club's Constitution of the Club Los Claveles in 2016 and separately 2017 were invalid and of no effect.	The subsequent purported amendments to the Club's Constitution of the Club Los Claveles in 2016 and separately 2017 were invalid and of no effect. <b>Found in WimPen's favour</b>

13	Declarator that the allocation and transfer of Membership certificates by the Claimants since 1 August 2015 in respect of "Cancelled Weeks" have been lawful and valid	18.25 - -I cannot make a positive order to the effect that what has happened in this regard has been lawful and valid. I would emphasise that that is not to say that I am making any finding to the effect that what has been done is unlawful and invalid, simply that I find myself unable on the basis of the evidence presented, to make the order sought. <b>Insufficient data to make a decision, not concluded as illegal</b>
14	An order declaring that the decision bearing to be of the Respondent - which was communicated by letter dated 12 May 2018 from Mr Fletcher to Senor German Castro in his capacity as Managing Director of the First Claimant and said to be "addressed to Wimpen, OnaGrup and any company or individual that is connected to the OnaGrup consortium" - in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution notifying its intention to cancel the Claimants' Membership of the Club is ultra vires	The decision bearing to be of the Respondent - which was communicated by letter dated 12 May 2018 from Mr Fletcher to Sefior German Castro in his capacity as Managing Director of the First Claimant and said to be "addressed to Wimpen, OnaGrup and any company or individual that is connected to the OnaGrup consortium" in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution notifying its intention to cancel the Claimants' Membership of the Club is ultra vires. <b>Found in WimPen's favour</b>
15	An order declaring that the decision bearing to be of the First Respondent which was communicated by letter dated 6 September 2018 from Mr Fletcher to Jane Oliphant in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution - notifying its intention to cancel Jane Oliphant's Membership of the Club, is ultra vires.	The decision bearing to be of the First Respondent which was communicated by letter dated 6 September 2018 from Mr Fletcher to Jane Oliphant in purported exercise of the Club Committee's powers under Clause 11.5.4 of the Club Los Claveles Constitution - notifying its intention to cancel Jane Oliphant's Membership of the Club, is ultra vires. <b>Found in WimPen's favour</b>
16	An order declaring that the purported refusal by the Respondent to recognise and afford the rights of Club Membership to Mr Roger Barrow, of [REDACTED] is ultra vires.	18.60 I do not find that the purported refusal by the Respondent to recognise and afford the rights of Club Membership to Mr Roger Barrow, of for data reasons the address has been hidden is ultra vires. The reasons for this are set out above but in summary: - I am not able to make the order sought on the basis that I have not seen relevant evidence to support it. - To be clear, however, I do not make a finding that the Respondent's refusal is valid. <b>I simply find that I do not have evidence available to make the order</b>
17	Interdict against the Respondent conducting any further business in relation to the Club without the participation on the Club Committee of individuals nominated to Committee membership by the First Claimant as "the Company" under the Club's Constitution of the Club Los Claveles, and for interdict ad interim.	It was agreed by the Parties at the conclusion of the Hearing that I should not deal in this Part Award with the Orders SEVENTEENTH and EIGHTEENTH sought in relation to interdict or with expenses.
18	Without prejudice to the foregoing generality, interdict against the Respondent purporting to cancel reassign, allocate, sell, transfer, encumber or otherwise deal with all and any of those Membership Certificates attesting to the timeshare weeks in the Club Los Claveles currently held by or in the name of the Claimants, and for interdict ad interim.	