

APPEALS & REQUESTS FOR CONFIRMATION OR CORRECTION

Q1. WHAT IS THE DIFFERENCE BETWEEN AN APPEAL AND A REQUEST FOR CONFIRMATION OR CORRECTION?

A1. An appeal is a claim by a party to a hearing, asserting that the protest committee decision in that hearing was incorrect, or that the protest committee's procedures were faulty – see rule 70.1. A request for confirmation or correction – sometimes called a 'reference' - is made by a protest committee under rule 70.2. Once these have been validly lodged with the RYA, the RYA's procedures for handling appeals and references are the same. A protest committee, knowing that a party to a hearing does not agree with its decision, will sometimes forestall an appeal by referring its decision.

Q2. TO WHERE ARE APPEALS AND REFERENCES TO BE SENT?

A2. To RYA Racing, RYA House, Ensign Way, Hamble-le-Rice, Southampton SO31 4YA, or electronically to racing@rya.org.uk

Q3. WHO DECIDES APPEALS AND REFERENCES?

A3. The Racing Rules Committee of the RYA, a team of volunteers which meets around 10 times a year to decide appeals and references. It also has many other responsibilities.

Q4. WHAT IS THE PROCEDURE FOR LODGING AN APPEAL?

A4. It is set out in the RYA's prescription to Appendix F of the Racing Rules of Sailing. The prescription is to be found on the RYA website (it was modified on 1st January 2010, so the version in the original RYA edition of the Racing Rules is not up to date – a cut-and-paste amendment slip is also available on the RYA website.) The address is:

www.rya.org.uk/SiteCollectionDocuments/Racing/RacingInformation/RacingRules/RYA%20Prescriptions%202009-2012.pdf

First, you must notify the RYA of your intention to appeal, within 15 days of the protest committee's decision. Second, you must then complete and lodge an appeal within 15 days.

The Appeal Form (also available by phoning or emailing RYA Racing) is on the RYA website at:

www.rya.org.uk/INFOADVICE/RACING/RACINGRULES/Pages/appeals.aspx

This form has to be completed and returned to RYA Racing together with several documents, of which the most important is a copy of the protest form containing the decision of the protest committee that is being contested (facts found, applicable rule(s), conclusions and decision) – so if you think at the end of a hearing that you may wish to appeal, ask immediately (and certainly within the next seven days) for a copy of the protest committee's decision – see rule 65.2. All of this is usually to be found on the second page of a protest form, but also ask for a copy of the front page as well.

The appeal form and all associated documents can in principle be sent electronically to the RYA, provided that the quality of any scan is good enough for the document to be legible when viewed electronically or printed. Anything sent as a hard (paper) copy will need to be

of sufficient quality to be scanned and circulated electronically. In this case, it is best to send the original of a document rather than a poor photocopy or a print of a local scan.

Q5. WHAT IS THE PROCEDURE FOR A PROTEST COMMITTEE TO REFER A DECISION?

A5. No form is needed. The protest committee has 15 days in which to send a copy of the protest form together with its facts found, applicable rule(s), conclusions and decision to the RYA, with a request for confirmation or correction of the decision.

Q6. IS THERE ANY CHARGE FOR THIS?

A6. There is no charge for an appeal from full personal or life member of the RYA. There is no charge for a reference by a protest committee. There is a charge, stated on the Appeal Form, for an appeal from a non-member. (Even though sailing clubs will be affiliated to the RYA, that does not make their members RYA members. Payment of the appeal fee can be avoided by a prompt application for individual RYA membership, which will not only cost less than the appeal fee but will provide many other benefits.)

Q7. IS THERE ANYTHING ELSE THAT CAN BE DONE BEFORE LODGING AN APPEAL?

A7. If you think that the protest committee has made a mistake in its decision, you can ask it to reopen the hearing – but you must act within 24 hours after being informed of the decision. Only a party to a hearing can ask for a reopening, and the protest committee can decide not to reopen. If the protest committee decides not to reopen, your time limit for appealing begins when you learn this. You do not have to ask for a reopening, and you can go directly to lodging an appeal. However, a reopening, if granted, may result in justice being done more quickly, and you retain the right of appeal against the outcome of the reopening.

Q8. WHO CAN APPEAL?

A8. Only a party to a hearing can appeal against the decision in that hearing. If you believe that a protest committee made a mistake in awarding redress in a hearing to which you were not a party, you cannot directly appeal. You must yourself first seek redress, and you will have the right to appeal if your request for redress is refused.

Q9. WHAT CAN YOU APPEAL ABOUT?

A9. You cannot appeal directly against the facts found, since the RYA is required to accept those facts – see rule 70.1. However, if the facts given are inadequate, the RYA will take steps to obtain adequate facts – see rule F5. One type of ‘inadequate fact’ that would lead the RYA to seek to get better facts is a fact found that appears clearly perverse in the light of all the information in the appeal. However, many appeals fail because they are in effect a disagreement between the views of the appellant and the protest committee as to what happened.

You can certainly appeal against the conclusions of the protest committee. The appeal form asks you to identify the racing rule or the sailing instruction (or other document governing the event) that you believe the protest committee misapplied.

You can appeal against the procedures of the protest committee. Normally, an appeal on procedural issues will succeed only when an objection to defective procedure was made at the original hearing. It is not a way of getting an otherwise correct protest committee decision overturned on a technicality. A failure to call any hearing or a denial of the right of a party to be present throughout a hearing may result in the upholding of an appeal. Normally, the outcome of a successful appeal against a protest committee’s procedures will be the granting of a new hearing by the same or a different protest committee, from whose decision all parties will retain the right to appeal.

Q10. WHAT SHOULD A PROTEST COMMITTEE DO TO REDUCE THE RISK OF AN APPEAL?

A10. It is most important that protest committees do not confuse finding facts with reaching conclusions when completing a protest form. Without a fact, there cannot be a conclusion. Writing clear, non-judgemental facts is a vital part of protest committee procedure, whether or not there is any prospect of an appeal or a reference. The facts found are statement of what happened. They should provide a clear picture of the incident that could be readily understood when read by someone with no knowledge of the incident or of the club – for that is the precise position of the members of the Racing Rules Committee who will hear any resulting appeal.

Q11. WHAT SHOULD A PROTEST COMMITTEE DO WHEN AN APPEAL IS LIKELY?

A11. It should ask itself whether it might have made a mistake leading to the need to reopen, to forestall or delay the appeal process. Informal advice can be sought from RYA Racing.

While protest committee diagrams concerning incidents on the water are not needed in uncontested decisions, they form an important part of appeals, and a protest committee aware that a decision may be appealed should promptly prepare a diagram, if possible adding it to the requested written decision. Lack of such diagrams at the outset is a major reason for delay in deciding appeals.

See also the answer to the previous question.

Q12. HOW MUCH DETAIL IS NEEDED FROM THE APPELLANT IN SUPPORT OF AN APPEAL?

A12. The appeal form invites brevity, but a separate document can be attached to the appeal form. That too should be brief. The RYA will ask for further information if necessary. Reference may be made to any ISAF cases, RYA cases, ISAF Questions and Answers or ISAF Team Racing or Match Racing calls that are thought to be relevant, but this is not essential.

Q13. WHAT HAPPENS ONCE AN APPEAL IS LODGED WITH THE RYA?

A13. First, receipt is acknowledged and the case receives a numerical reference. Then RYA Racing acts under rule F3, circulating the appeal to the other parties, to the protest committee and sometimes to other relevant bodies or persons (see the RYA prescription to rule F4). Missing information and documents are requested. The recipients have 15 days in which to comment, and those comments are copied to the appellant, to other parties and to the protest committee.

The case is then put down for consideration at the next meeting of the Racing Rules Committee. Any member of the Racing Rules Committee who has a close interest in the case (for instance, as a party to the hearing, as a member of the protest committee, or having given private advice beyond procedural matters to a party at any stage) will not take part in the consideration of the appeal. Before the meeting, members of the Committee will usually discuss the points at issue by email. At the meeting, the case will usually be decided in principle (although sometimes it will be deferred to the next meeting if further information is needed). Sometimes, the decision can be released in a few weeks once the careful wording of the decision is agreed. Usually, a draft decision will then come to the next meeting for final approval and release. The decision letter is sent to the appellant, to other parties and to the protest committee.

It will be seen that several months can therefore elapse between the lodging of an appeal and the decision letter.

Appeals, references and questions that raise interesting issues of rule interpretation or application are published as RYA cases, initially in a periodic Supplement to the RYA Case Book. The process of turning an appeal into a case involves editing of the original decision.

The Case Book is reviewed with every quadrennial rule change, at which point the case will either be retained unchanged, be edited to harmonise with any rule change, or will be deleted. Some cases form the basis of submission to ISAF for acceptance as an ISAF case. The RYA Case Book is to be found at:

www.rya.org.uk/INFOADVICE/RACING/RACINGRULES/Pages/ryacasebook.aspx

Q14. WHAT ARE THE DECISION OPTIONS FOR THE RACING RULES COMMITTEE?

A14. These are set out in rules 71.2 and 71.3. It should be noted that a boat which appeals against the dismissal of a protest may herself be disqualified as a result of her appeal if the Racing Rules Committee decides that she, as well as or instead of the other boat, broke a rule.

Q15. IF MY APPEAL IS NOT UPHELD, CAN I APPEAL TO ISAF?

A15. No. There is no mechanism for this.

Q16. IF MY APPEAL IS UPHELD, CAN THE PROTEST COMMITTEE OR RACE COMMITTEE DECIDE NOT TO IMPLEMENT THE APPEAL DECISION?

A16. No. See rule 71.4.

Q17. IS THERE ANY OTHER WAY TO FIND OUT THE RIGHTS AND WRONGS OF A SITUATION?

A17. Yes. The RYA offers a rapid-response Rules Advisory Service, which is run by members of the Racing Rules Committee. See:

www.rya.org.uk/infoadvice/racing/racingrules/Pages/advisoryservice.aspx

The Rules Advisory Service may be able to help:

- A competitor or race committee with a rules query
- A competitor considering whether to protest, request redress or ask for a reopening*
- A protest committee in receipt of a tricky protest or request for redress*
- A competitor considering whether to appeal
- A protest committee considering whether to refer its decision to the RYA

* Answers are given as soon as possible, but they may not be available within the required time for these procedures

Other sources of desk research include:

- The ISAF Case Book, available on the ISAF website: www.sailing.org
- The RYA Case Book, as referred to above
- RYA Guidance Notes on certain issues, see:
www.rya.org.uk/infoadvice/racing/Pages/bestpractices.aspx