

RYA GUIDANCE**RECOMMENDATIONS FOR PROTEST COMMITTEES**

(WITH FURTHER ADVISORY NOTES FROM THE RYA)

This appendix is advisory only; in some circumstances changing these procedures may be advisable. It is addressed primarily to protest committee chairmen but may also help judges, jury secretaries, race committees and others connected with protest and redress hearings.

In a protest or redress hearing, the protest committee should weigh all testimony with equal care; should recognize that honest testimony can vary, and even be in conflict, as a result of different observations and recollections; should resolve such differences as best it can; should recognize that no boat or competitor is guilty until a breach of a *rule* has been established to the satisfaction of the protest committee; and should keep an open mind until all the evidence has been heard as to whether a boat or competitor has broken a *rule*.

M1 PRELIMINARIES (may be performed by race office staff)

- Receive the *protest* or request for redress.
- Note on the form the time the *protest* or request is delivered and the protest time limit.
- Inform each *party*, and the race committee when necessary, when and where the hearing will be held.

Use the latest protest form, either from the ISAF website or the RYA version on the RYA website. The RYA version also allows for arbitration hearings.

Make sure that no race official refuses to accept a protest form because it was lodged outside the protest time limit. It is only the protest committee that can decide that a protest is out of time, and there may be a good reason to extend the time limit.

It is useful to have a clause in the sailing instructions saying that a notice will be posted on the official notice board within a stated time after the end of protest time listing the hearings, the parties and the place and approximate times of hearings, and that this is the notice required by rule 63.2. If a party does not attend, the protest committee can decide to start the hearing (rule 63.3(b)) with little danger of a need to reopen later. Some would also include in that notice the witnesses cited in the protest form, but it is the party calling the witness who is responsible for securing the witness's attendance, and should not be led to expect that someone else will arrange this. The protest committee cannot compel anyone, party or witness, to attend.

Try to ensure that the room where the hearings will take place is accessible to people with physical disabilities.

When there are to be several hearings, one or more of which are requests for redress

against the race committee, try to schedule those requests for redress consecutively, and preferably as the first hearing(s), particularly if evidence from several members of the race committee may be needed. Do not rely on the notice of protest hearings for advising the race committee that it will be involved in a hearing – contact the race officer as soon as a request is lodged.

If a request for redress alleges that a boat has been wrongly scored, try to get the requester to raise the matter directly with the race committee to seek correction before any hearing, which will then be necessary only if the complaint cannot be resolved. Some events use 'clearance forms' for competitors to complete to get satisfaction over scoring queries without the matter ever needing to come to the protest committee.

For a request for redress concerning OCS, encourage the party and the race committee to exchange information before the hearing (including allowing the competitor to see any document or hear any tape that will be offered in evidence). It may lead the competitor to realise that the request is misplaced and to ask to withdraw it: or it may lead the race committee to come into the hearing admitting that a mistake has been made, which (if agreed by the protest committee) will result in the speedier granting of redress.

Complete the protest committee's side of the protest form as the hearing proceeds, using it as a procedural aide-memoire.

However, unless the sailing instructions say so, there is no obligation for a protestor or requester to use a protest form, anything written will suffice, and it need not be signed. Attach the document to a blank protest form and proceed normally. For protests, rule 61.2 allows the initial document to be valid even if considerably deficient in information, which can be added later. The same principle should be applied to requests for redress. For instance, a request for redress could be a letter or note from a boat. It may indeed not be clear from what is lodged that redress is being requested, as few of the particulars required for a redress claim in rule 62.1 may be set out. Similarly, there may be a claim written on a protest form that, if upheld, might result in redress being given, but the boat has not ticked the 'request redress' box on the protest form.

If there is a complaint in writing about race management that does not use a protest form, does not allege directly or indirectly that the boat's finishing position has been affected, and does not seek any particular remedy, refer the matter first to the race committee. But, if in doubt, treat a complaint as a possible request for redress, and call a hearing. . The boat will then be able to make her case, and the protest committee will decide whether each necessary requirement of rule 62.1 has been met. The request may then fall at an early hurdle, for instance by the boat not being able to show a worsened finishing position despite (say) a clear race committee mistake, but that is a judgement that can be made only in a hearing.

M2 BEFORE THE HEARING

Make sure that

- Each *party* has a copy of or the opportunity to read the *protest* or request for redress and has had reasonable time to prepare for the hearing
- No member of the protest committee is an *interested party*. Ask the *parties* whether they object to any member. When redress is requested under rule 62.1(a), a member of the race committee should not be a member of the protest committee.
- Only one person from each boat (or *party*) is present unless an interpreter is needed.
- All boats and people involved are present. If they are not, however, the committee may proceed under rule 63.3(b).
- Boats' representatives were on board when required (rule 63.3(a)). When the

parties were in different races, both organizing authorities must accept the composition of the protest committee (rule 63.8). In a measurement *protest* obtain the current class rules and identify the authority responsible for interpreting them (rule 64.3(b)).

When it is possible that a party may not know a member of the protest committee, introduce and name the protest committee members (including yourself) when asking for objections. At regattas with many hearings before the same protest committee, type the name of each member in 24 pt across the middle of a piece of paper and fold and tape it into a 'toblerone' shape to put as a name-plate in front of each protest committee member. It will speed the introductions. If a protest committee member is a Regional, National or International Judge, you might add the initials RJ, NJ or IJ to the name.

While only the parties are entitled to be present, it is good policy to agree to requests from others to observe, on the understanding that they can say nothing, that they sit behind (and so out of eye contact with) the parties, and that they cannot then be called as witnesses. When a protest involves children, the presence of a parent as observer is desirable, if only so that the parent can appreciate that the procedure was correct and any penalty was appropriate on the facts found.

Children should normally be expected to make out their own cases without assistance, whether as a party or a witness, but the protest committee must take considerable care to make the proceedings gentle and non-intimidatory – although always firm and structured. The normal configuration of protest committee of adults on one side of the table and the parties on the other can be off-putting for juniors, and convening 'round a table' may be preferable. If the weather serves, consider holding the hearing outside. For very young children, the assistance of an adult may be allowed. Do not try (however well-intentioned) to make things easier for children by hearing them in the absence of one or more parties.

Be sensitive to any disabilities that may make it difficult for a party or witness to speak or to understand the proceedings. If uncertain, ask 'Will you need any help in giving your evidence, asking questions or understanding what is said?' Offer assistance in the form of a helper, and, if in doubt, insist on it.

When a request for redress might result in the need to make substantial changes to the results of other boats, and especially if abandonment is a possible outcome, consider acting under rule 60.3(b) to call a hearing to consider redress for the whole fleet, to be heard with the original request for redress, so that all boats potentially affected can attend and express a view. The protest committee will need to complete its own form initiating redress, and then the two forms can be the subjects of a concurrent hearing.

Alternatively, proceed under the original request for redress, and invite the other boats to attend and speak their minds. Although that technically breaches the ban on witnesses being present throughout, the full exchange of views and provision of information may prevent the protest committee giving redress on the action of one boat alone, only for others to seek justifiable redress in turn, on the grounds that the original redress was unfair to them. That could take unnecessarily long to resolve.

M3 THE HEARING

M3.1 Check the validity of the *protest* or request for redress.

- Are the contents adequate (rule 61.2 or 62.1)?
- Was it delivered in time? If not, is there good reason to extend the time limit (rule 61.3 or 62.2)?
- When required, was the protestor involved in or a witness to the incident (rule

60.1(a))?

- When necessary, was 'Protest' hailed and, if required, a red flag flown correctly (rule 61.1(a))?
- When the flag and hail were not necessary was the protestee informed?
- Decide whether the *protest* or request for redress is valid (rule 63.5).
- Once the validity of the *protest* or request has been determined, do not let the subject be introduced again unless truly new evidence is available.

Rule 61.2 allows the protest form to be considerably inadequate and yet sufficient for a hearing to begin, as missing information can be added before or during the hearing. In a protest, the only mistake or omission that cannot be corrected is the requirement (rule 61.2(b)) to identify the incident, including where and when it occurred. The 'when' may be an explicit time, or a moment whose time can be deduced, such as 'race 3, first beat'. If the protestor has misidentified the protested boat, that is no reason to find the protest invalid, but it should result in the protest being promptly dismissed, because there is no evidence that the protested boat broke a rule.

When the description of the incident shows that the party has not ticked the correct box relevant to the protest and/or request for redress, this can be corrected. However, as seen below, anything that is clearly only a request for redress cannot be converted by the protest committee to a protest.

As already stated, a request for redress need not make out in writing every element of the start of rule 62.1, and so a hearing should continue even if the form does not make clear the extent of places or points alleged to be lost, or if there is no assertion that the requester was not at fault. These are matters to be established during the hearing.

There needs to be a good reason to extend the protest time limit. It is unlikely that there would be a good reason for extending the time limit for a *protest* after the end of a regatta. However, in redress situations where the facts justifying the request may not be known by the end of protest time – for instance, when the facts justifying a request are to be found in handicap results that are published and sent out after the event – then the protest committee should be satisfied with a request lodged within a day or so of receiving the information.

While it is never wrong to enquire diligently as to whether all requirements for flagging and hailing have been complied with, it will be proper to proceed with the hearing if the protestor's form says that notification was prompt, and, when asked, the protestee does not contest the validity of protest notification. If the protestee says that no protest hail was heard, but the protestor is firm that a hail including the word 'protest' was made, give the benefit of any doubt to the protestor.

With a protest and counter-protest over what is clearly the same incident, one hearing will suffice. If both protests are valid, offer the right to speak first to the party whose protest was lodged first.

M3.2 Take the evidence (rule 63.6).

- Ask the protestor and then the protestee to tell their stories. Then allow them to question one another. In a redress matter, ask the *party* to state the request.
- Invite questions from protest committee members.
- Make sure you know what facts each *party* is alleging before calling any witnesses. Their stories may be different.
- Allow anyone, including a boat's crew, to give evidence. It is the *party* who normally decides which witnesses to call, although the protest committee may also call witnesses (rule 63.6). The question asked by a *party* 'Would you like to hear

N?’ is best answered by ‘It is your choice.’

- Call each *party’s* witnesses (and the protest committee’s if any) one by one. Limit *parties* to questioning the witness(es) (they may wander into general statements).
- Invite the protestee to question the protestor’s witness first (and vice versa). This prevents the protestor from leading his witness from the beginning.
- Allow a member of the protest committee who saw the incident to give evidence (rule 63.6) but only in the presence of the *parties*. The member may be questioned and may remain in the room (rule 63.3(a)).
- Try to prevent leading questions or hearsay evidence, but if that is impossible discount the evidence so obtained.
- Accept written evidence from a witness who is not available to be questioned only if all *parties* agree. In doing so, they forego their rights to question that witness (rule 63.6).
- Ask one member of the committee to note down evidence, particularly times, distances, speeds, etc.
- Invite first the protestor and then the protestee to make a final statement of her case, particularly on any application or interpretation of the *rules*.

Models are particularly useful for parties and witnesses to show the changes in positions of the boats. Ideally, have enough so that the models showing the position at the beginning of the incident can be left in place, and further models can be added and also left in place on the table for each stage of the incident. This will more clearly show up any inconsistencies. With sufficient models, these 'diagrams' from all parties can be set out side by side, so that the differences in the evidence can be highlighted. Otherwise, if it is necessary to remove one 'diagram' for another to be displayed, use a mobile phone's camera to record it. Suitable models are available from the RYA.

Each party and (especially) any witness should start afresh illustrating the situation, except that the chairman may leave undisturbed any non-contentious positions of wind or current direction, starting or finishing lines, or marks, as already established, to preserve orientation of what is described. Make sure you are told what had happened before the incident, and what happened after it.

M3.3 Find the facts (rule 63.6).

- Write down the facts; resolve doubts one way or the other.
- Call back *parties* for more questions if necessary.
- When appropriate, draw a diagram of the incident using the facts you have found.

Facts and conclusions are NOT the same thing. Conclusions are drawn from the application of logic or of the rules to the facts – see below. To say that A did not keep clear of B is not a fact. It is a conclusion, based on unstated facts. The facts would be the relative positions and courses of A and B. Statements that there was serious damage, or that a boat did not sail the course, are also examples of conclusions, to be drawn from recorded facts of how the boat was harmed, or of the course designated by the race committee and the course she actually sailed. Only relevant facts need be recorded. Wind, sea-state and tide or current should be noted.

It may help to imagine that you are describing what happened to someone who was not present – as you will be if the protest goes to appeal. Simple statements made as ‘bullet points’ – just like the construction of this appendix – are recommended. The latest protest forms do not provide for protest committee diagrams unless asked for, but if time permits, a diagram can be useful – and may be necessary on appeal.

Failure to record facts properly is often the reason why a protest committee makes a wrong decision, to judge from appeals received by the RYA. This leads either to the appeal being upheld, or to the case being returned to the protest committee for further facts, and possibly a reopening. So keep the facts as facts, and say nothing judgmental at this stage.

M3.4 Decide the *protest* or request for redress (rule 64).

- Base the decision on the facts found (if you cannot, find some more facts).
- In redress cases, make sure that no further evidence is needed from boats that will be affected by the decision.

PROTESTS

There are three steps – decide which rule or rules apply to the facts, state conclusions, and make the decision. Here is an example, including the statement of facts:

FACTS FOUND

- *Boat A was reaching on starboard tack in 10kts of wind, towards the next mark, to be rounded to starboard, which was 100 metres away. Tide was slack, wind direction steady.*
- *Boat B was clear astern of boat A, also reaching on starboard tack, and sailing faster. She became overlapped to leeward approximately 1 hull length from A. She changed course to a course approximately 20° higher than boat A's.*
- *Boat A hailed boat B not to sail above a proper course.*
- *Boat A held her course, and boat B continued to sail her higher course for around 10 seconds, until the boats came within 30 cm of each other.*
- *Boat B bore away. There was no contact. Each protested the other.*

RULES AND CONCLUSIONS

- **Definition, proper course.** *The course sailed by boat B was above her proper course, as, if held, it would have taken her far to windward of the next mark, and there was no reason for sailing that high at the time, in the absence of A.*
- **Rule 17.** *Boat B was required not sail above a proper course as overlap was established within two lengths.*
- **Rule 15.** *Boat B became right of way boat when the overlap began. She was initially required to give boat A room to keep clear, and she gave that room.*
- **Rule 16.** *Boat B was then required to give boat A room to keep clear when she changed course. The protest committee is satisfied that Boat A could have kept clear by a seamanlike change of course.*
- **Definition, keep clear.** *Boat B was not able to sail her course with no need to take avoiding action.*
- **Rule 11.** *Boat A was required to keep clear of Boat B, and did not do so.*

DECISION

Boat B is disqualified under rule 17. Boat A is disqualified under rule 11.

Note the following from this example.

- First, it is not necessary for there to be contact in order for a boat to be found not to have *kept clear*, as the definition of that term shows. Contact is usually evidence that a boat has already broken a rule. (For instance, if a boat clear astern sails into the transom of one clear ahead, she will have broken rule 12 **before** the collision, at the point the boat ahead would have needed to take avoiding action.) Second, it is quite possible, as here, that both boats may have broken a rule, in which case both are to be penalized. A boat is to be exonerated under rule 64.1(b) only when she was otherwise blameless, and was compelled to break a rule by the other boat's breaking of a rule. In this case, Boat A was required to keep clear and had the room to do so. The fact that boat B broke rule 17 does not exonerate boat A's breach of rule 11.
- If there is contact, facts and conclusions relevant to rule 14 must be recorded. When a give-way boat has broken a right-of-way rule (rule 10-13), she may have broken rule 14 as well if there was contact, but her disqualification will be based primarily on the right-of-way rule concerned.
- If there was damage, then facts and conclusions relevant to rule 14 must be arrived at concerning the boat with right of way under rules 10-13 or a boat (right-of-way or give-way) entitled to room under rules 15, 16, 18 or 19. For a right-of-way boat or one entitled to room to be penalized under rule 14, there must have been contact that caused damage, being contact that the right-of-way or room-entitled boat could have avoided. This too is a situation where both boats in a protest could be disqualified, regardless of which originally protested which – the give-way boat for not keeping clear, and the other for not avoiding contact. Note that the right-of-way or room-entitled boat is not required to act to avoid contact until it is **clear** that the other boat is not keeping clear or giving room.
- Disqualification is normally the only possible outcome when a protest committee, considering a *protest*, decides that a boat has broken a rule, including a class rule or sailing instruction (which are themselves rules), unless the rule concerned offers some other possibility. Sailing instructions can be constructed in differing ways: some instructions say that a boat shall or shall not do something; others state that any boat doing or not doing something will be disqualified. The effect is the same – the outcome of a breach is disqualification when no other penalty is stated to apply.
- In a protest, the decision must be confined to the parties and to the incident stated on the protest form. It is quite possible that the protest against the protestee will be dismissed, but the protestor will be found to have broken a rule and is to be disqualified. You can disqualify any party – but only a party. If it is decided that a rule was broken by another boat that is not a party to the protest, that boat (even if a witness at the hearing) cannot be penalized unless a fresh protest is lodged against her by the protest committee (rule 60.3(a)(2)) in which case rule 61.1(c) says the current hearing shall be closed, and the original and new protests are to be heard together.
- If a protest is found to be invalid, but there is an allegation or possibility of injury or serious damage, rule 60.3(a)(1) permits the protest committee to protest any boat involved. When the new protestee is the boat already protested in the invalid protest, a fresh protest is nevertheless required, with a fresh protest form completed by the protest committee. A fresh hearing must be called (which may however be as near immediately as possible, if the protestee does not ask for further time.) The first matter to be ascertained is whether there was indeed serious damage or serious injury. If not, close the hearing.

- If a party to a protest has also requested redress (for instance, if claiming to have been physically damaged by the other boat), then the protest decision and redress decision can be stated on the same form. Decide the protest first, add any further facts relevant to redress. That will now be the basis for deciding whether redress is due, and, if so, what redress.
- It may be that a boat that is a party in a protest hearing has not requested redress, but redress is clearly in order under a clause of rule 62.1. It would be appropriate to say that the protest hearing will become a redress hearing in favour of the boat, without needing to make a fresh start. Use the same protest form to record any additional relevant facts and state the redress given.

REQUESTS FOR REDRESS

In order to qualify for redress, a boat's finishing position in a race or series must have been made significantly worse by one of the causes listed in rule 62.1, and she herself must not have been at fault. Facts need to be found to enable these to be drawn as conclusions.

Common Redress Situations

The race committee disqualifies a boat without a hearing (or scores her DNF) when it believes that she did not sail the correct course. If the boat actually complies with the definition Finish by crossing the finishing line in the direction of the course from the last mark, she is entitled to a finishing place, which can only be taken away from her (unless otherwise specified in the sailing instructions) as a result of a protest (rule A5). She is to be reinstated.

A sailing instruction that says that a boat doing or not doing something will be disqualified. Sometimes, a race committee will believe that this entitles it to disqualify without a protest and hearing. For that to be the case, it would in fact have to be stated explicitly in the sailing instructions, as a change to rule 63.1. She is to be reinstated.

The only outcome of a valid request for redress is either the granting or refusal of redress.

In the examples above, the matter to be decided in the boat's request for redress is whether the race committee was empowered to change her finishing position without a hearing. What the competitor actually did or did not do is not relevant. If the race committee was acting outside its powers, the boat is to be reinstated. The protest committee is not entitled to convert the redress hearing to a protest hearing, and it cannot therefore uphold or reimpose the disqualification. It may well seem that the boat will be fortunate to be awarded her finishing place, but it is not for the protest committee to make up for the failings of the race committee in not protesting properly (or not writing its sailing instructions properly) in the first place.

- A boat claims she was wrongly identified as OCS (or ZFP or BFD): give the benefit of any doubt to the race committee, whose race officer will have been best placed to identify her.

See additional guidance on redress on the RYA website at www.rya.org.uk/racingrules.

M3.5 Inform the *parties* (rule 65).

- Recall the parties and read them the facts found, conclusions and *rules* that apply, and the decision. When time presses it is permissible to read the decision and give the details later.
- Give any *party* a copy of the decision on request. File the *protest* or request for

redress with the committee records.

Remember to give details of your decisions to the scorers!

M4 REOPENING A HEARING (rule 66)

When a party, within the time limit, has asked for a hearing to be reopened, hear the *party* making the request, look at any video, etc., and decide whether there is any material new evidence that might lead you to change your decision. Decide whether your interpretation of the *rules* may have been wrong; be open-minded as to whether you have made a mistake. If none of these applies refuse to reopen; otherwise schedule a hearing.

M5 GROSS MISCONDUCT (rule 69)

M5.1 An action under this rule is not a *protest*, but the protest committee gives its allegations in writing to the competitor before the hearing. The hearing is conducted under the same rules as other hearings but the protest committee must have at least three members (rule 69.1(b)). Use the greatest care to protect the competitor's rights.

M5.2 A competitor or a boat cannot protest under rule 69, but the protest form of a competitor who tries to do so may be accepted as a report to the protest committee which can then decide whether or not to call a hearing.

M5.3 When it is desirable to call a hearing under rule 69 as a result of a Part 2 incident, it is important to hear any boat-vs.-boat *protest* in the normal way, deciding which boat, if any, broke which *rule*, before proceeding against the competitor under this rule.

M5.4 Although action under rule 69 is taken against a competitor, not a boat, a boat may also be penalized (rule 69.1(b)).

M5.5 The protest committee may warn the competitor (rule 69.1(b)), in which case no report need be made to the national authority (rule 69.1(c)). When a penalty is imposed and a report is made to national authorities, it is helpful to recommend to whether or not further action should be taken.

See separate Misconduct Guidance for RYA Race Officials on the RYA website at www.rya.org.uk/racingrules. If you would still like advice before proceeding, contact the Racing Division at the RYA.

M6 APPEALS (rule 70 and Appendix F)

When decisions can be appealed,

- Retain the papers relevant to the hearing so that the information can easily be used for an appeal. Is there a diagram endorsed or prepared by the protest committee? Are the facts found sufficient? (Example: was there an *overlap*? Yes or No. 'Perhaps' is not a fact found.) Are the names of the protest committee members and other important information on the form?
- Comments on any appeal should enable the appeals committee to picture the whole

incident clearly; the appeals committee knows nothing about the situation.

If you are unsure about your decision, or if you think that it raises an interesting point about the application of the rules, consider referring your decision to the RYA, which welcomes such references (see rule 70.2).

M7 PHOTOGRAPHIC EVIDENCE

Photographs and videotapes can sometimes provide useful evidence but protest committees should recognize their limitations and note the following points:

- The *party* producing the photographic evidence is responsible for arranging the viewing.
- View the tape several times to extract all the information from it.
- The depth perception of any single-lens camera is very poor; with a telephoto lens it is non-existent. When the camera views two *overlapped* boats at right angles to their course, it is impossible to assess the distance between them. When the camera views them head on, it is impossible to see whether an *overlap* exists unless it is substantial.
- Ask the following questions:
 - Where was the camera in relation to the boats?
 - Was the camera's platform moving? If so in what direction and how fast?
 - Is the angle changing as the boats approach the critical point? Fast panning causes radical change.
 - Did the camera have an unrestricted view throughout?