



Misconduct: A Reference for Race Officials



RYA
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RYA GUIDANCE

MISCONDUCT: A REFERENCE FOR RACE OFFICIALS

Being asked to deal with unacceptable behaviour is one of the most difficult but important jobs in our sport. It does not happen often but the future of our sport as an inclusive family activity depends on handling these complaints well and not sidestepping them.

This guide has been written to help you through the process: it cuts no corners and should answer all your questions. It is intended as a complete reference work for all race officials – in particular, judges and protest committees. Summary guidance is also available in YR1, the RYA's publication of the Racing Rules of Sailing.

There is no substitute for knowing the procedures in the rules and knowing when to act to confront misconduct, but this guide and the advice in it is a useful starting point.

The guide has been produced and will be maintained by the RYA Racing Rules Committee and, in particular, by its Fair Sailing Team. Some sections have been taken from documents developed and approved by the RYA Judging & Umpiring Committee or the ISAF.

Any comments and feedback will be gratefully received.

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The disciplinary authorities in the UK

1 The RYA

- 1.1 The Royal Yachting Association is the national authority for the UK under the Racing Rules of Sailing and also the national governing body for the sport.
- 1.2 The RYA has three main roles in relation to misconduct, which are:
 - 1.2.1 hearing appeals from the decisions of protest committees under rule 70;
 - 1.2.2 considering reports under rules 69.2 and 69.3 and taking further disciplinary action; and
 - 1.2.3 making prescriptions to the rules, issuing best practice and guidance to race officials and competitors.
- 1.3 The RYA has several committees and groups that carry out these functions for it. They are listed below with a brief explanation of their roles and responsibilities. The main point of contact is the Secretary listed.

2 RYA Tribunal

- 2.1 The RYA Tribunal carries out investigations and hearings under rule 69.3 on behalf of the RYA.
- 2.2 It has the power to impose a greater range of penalties than a protest committee (such as suspending a competitor from competition, banning them for a set period (including life) from events within its jurisdiction and suspending their ISAF eligibility).
- 2.3 The Secretary to the Tribunal is the RYA Legal Manager.

3 RYA Racing Rules Committee ("RRC")

- 3.1 The RYA Racing Rules Committee hears appeals from the decisions of protest committees under rule 70.
- 3.2 In hearing an appeal, the RRC only concerns itself with the procedures followed and the application of the racing rules. The RRC must accept the facts found by the original protest committee.
- 3.3 The average time for an appeal to be determined is approximately 2-3 months (depending on the meetings and workload of the RRC).
- 3.4 The RRC also draws up the RYA Prescriptions to the RRS.
- 3.5 RRC has established a Fair Sailing Team that manages and updates all guidance on misconduct and disciplinary matters.
- 3.6 The Secretary to the RRC is the RYA Racing Rules Manager.

4 RYA Judging & Umpiring Committee ("JUC") and Race Management Committee ("RMC")

- 4.1 JUC and RMC are responsible for appointing, educating and developing race officers, judges and umpires. As part of this role, they produce guidance notes on topics such as dissent and best practice for protest committees.
- 4.2 All of the relevant JUC guidance notes have been replicated in this Guidance.
- 4.3 The Secretary to JUC and RMC is the RYA Racing Rules Manager.

5 Protest Committees

- 5.1 In relation to misconduct, protest committees fulfil an important role at all events. The protest committee must hear all protests delivered under rule 2 and also can investigate and hold hearings into misconduct under rule 69.
- 5.2 Protest committees must act with fairness and propriety at all times. Whilst all race officials have a role to play in challenging and dealing with misconduct, it is the protest committee that is at the centre of this process.
- 5.3 When a matter is referred to the RYA for further action or investigation, the RYA looks principally to the protest committee to report on what happened at an event. It is therefore vital the protest committee carries out its fact-finding duties scrupulously.

Policy and Jurisdiction

6 When should rule 69 be used?

6.1 The sport should not tolerate bad behaviour, and action under rule 69 is a potent way of dealing with this problem. Turning a blind eye to misconduct only serves to damage the enjoyment of those who behave properly, which in turn puts people off participating in the sport.

6.2 It is the responsibility of all race officials to deal with misconduct in an appropriate and timely manner. The RYA Racing Charter states:

“The sport welcomes all participants; it relies largely on self-compliance and self-policing. Those that deliberately take unfair advantage of this or behave in an inappropriate manner, either on or off the water, can expect to be brought to account”

6.3 If in doubt, it is better to call a hearing under rule 69, and find an allegation unsubstantiated, than not to call a hearing at all.

7 Who is subject to rule 69.1?

7.1 Under rule 69.1(a), a ‘competitor’ means the owner of a boat and any crew member.

7.2 Rule 69 does not apply to other people (such as coaches, parents, etc.), even if associated with a competitor. This is the case even though there is some wording in rule 69.3 that could suggest non-competitors fall within its scope. Please see Appendix M for further details about why rule 69 cannot be used against non-competitors.

8 The extent of rule 69 jurisdiction (the time and location of misconduct)

8.1 The jurisdiction of the protest committee under rule 69 extends from the time competitors arrive at the event location for the purpose of competing until they depart.

8.2 If the competitor can readily be associated with the event, or if there is brawl in a public place between competitors, or if several competitors join together in bad behaviour, then the protest committee can take action. The important question is whether the behaviour of the competitors can reasonably be said to be associated to the sport or to the event.

8.3 When a club or event receives a complaint from someone who is not associated with the event about the behaviour of one or more competitors, this indicates that a connection has already been made and the sport in general (and the event in particular) may have been brought into disrepute.

8.4 Misconduct occurring after the end of the event, possibly even away from the event location, could be considered under rule 69 if sufficient association to the event is established.

9 Types of behaviour justifying rule 69 action

- 9.1 All behaviour must be considered in context – some types of behaviour should be treated as ‘zero-tolerance’ issues, others (such as bad language) require consideration of the context and nature of the event.
- 9.2 It is for the whole protest committee to consider this however – what one race official perceives as acceptable may be regarded by others as misconduct.
- 9.3 Examples (which are by no means exhaustive) are included in Appendix A.

10 Interaction with RYA squad and training processes

- 10.1 All competitors must be treated equally. Membership of (or potential selection to) a RYA squad does not affect the role of the protest committee and are irrelevant considerations when considering action under rule 69.
- 10.2 It is RYA policy that an adverse rule 69 hearing will not automatically worsen a competitor’s future prospects, but the RYA must know if they commit misconduct at an event in order that their suitability for selection can be properly assessed.
- 10.3 Any decision on a competitor’s future prospects is for the RYA to make.

Making a Report

11 Who may make a report?

11.1 A report can be lodged by any person (who need not be a competitor). This can include:

11.1.1 the race committee, or one of its members;

11.1.2 the protest committee, or one of its members;

11.1.3 the organizing authority;

11.1.4 spectators;

11.1.5 passing cruising boats;

11.1.6 local residents;

11.1.7 the host club (if not already the organizing authority); or

11.1.8 another event.

12 Form of report

There is no definition of what a report is. It may be a written or oral complaint. However, it is preferable that the report is put into writing.

13 With whom should the report be lodged?

13.1 If a protest committee has already been appointed, then the report should be lodged with it.

13.2 However, the protest committee should involve the organizing authority at the earliest opportunity, as the hearing might better be conducted in front of a different or strengthened protest committee. It is for the organizing authority to appoint the protest committee who will conduct any rule 69 hearing.

13.3 If an international jury has been appointed to the event, then the report should be lodged with this body and it would be the suitable body to conduct a hearing.

13.4 If no protest committee has been appointed, the report should be lodged with the organizing authority, which should then appoint a protest committee. Once appointed, the protest committee should be given the report to consider.

14 Reports lodged with organizing authorities/clubs/other authorities

14.1 If a report is lodged with the organizing authority, club or race committee, there is no obligation on it to refer it to a protest committee. However it is firmly recommended that they do so.

14.2 It may be appropriate for a report also to be lodged with a host club or another authority (such as a class association, BUSA etc.) for action under their own disciplinary processes.

- 14.3 Action under rule 69 does not preclude action by a club or other body and *vice versa*. However, the powers of a club (which will include the suspension or removal of membership) are unlikely to be powers available to the protest committee.
- 14.4 At an event organised by a club or a class, it may be prudent and helpful for the protest committee chairman to inform a relevant official (for example a Flag Officer or responsible member of the class committee) of a potential rule 69 hearing. A constructive dialogue between race officials and the club/class is important to maintain at all events: the club/class may be able to give important contextual information and inform the committee of the class's disciplinary ethos.
- 14.5 It may be that the protest committee considers that the misconduct is best left to the club or class to deal with under their own disciplinary procedures. The committee must be confident that the club or class will take real steps to address the misconduct, as once the event ends, it will be unable to go back and investigate if matter has not been dealt with.
- 14.6 Remember, it is inappropriate to discuss the specifics of a case with anyone outside the protest committee. The committee should also be wary of being told too much about the background of the competitor as this may lead it (inadvertently) to consider irrelevant information during a hearing.

Role of the protest committee

15 Action by the protest committee acting under its 'own observation'

- 15.1 Rule 69.2(a) allows a protest committee to call a rule 69 hearing without a report being filed if the protest committee believes that a breach of rule 69.1(a) may have been committed based on its own observations.
- 15.2 This observation can include information acquired during a normal protest or redress hearing (whether or not the protest/request is valid) or anything seen or heard by members of the protest committee ashore or afloat.
- 15.3 It is recommended that the conduct observed is written down and submitted to the full protest committee for consideration.

16 Consideration of a report

- 16.1 Once the report has been lodged, the protest committee must consider whether or not to act on it.
- 16.2 ISAF and RYA policy is that it is essential to the healthy development of the sport that appropriate penalties be imposed on competitors guilty of gross misconduct (i.e. gross breach of a rule or of good manners or sportsmanship, or who have brought the sport into disrepute).
- 16.3 In addition, rule P2.3 requires the protest committee to consider calling a rule 69 hearing when a boat fails to retire after a third 'yellow flag' penalty under rule 42. It is also an option in the event of a gross breach of the ISAF Advertising Code.
- 16.4 However, neither a hearing under rule 69 nor a protest under rule 2 (see below) may be the best way to deal with every problem, particularly for:
 - 16.4.1 non-malicious excess aggression arising from youth or inexperience of the sport (see Appendix K); or
 - 16.4.2 an isolated instance of knowingly having broken a rule without intent to do so, but not then taking a penalty.
- 16.5 A protest committee can ask a competitor to appear before it, to make it clear to the competitor that his/her unacceptable behaviour, noting the Basic Principle, Sportsmanship and the Rules and rule 2, Fair Sailing. This is not a hearing under rule 69.1, even though the effect may be to give an informal warning as to future conduct that, if repeated, might give rise to a hearing under rule 69. For youth and juniors, see Appendix K.

17 Interaction between rule 2 and rule 69

The protest committee must be aware of the interaction between rule 2 and rule 69. For detailed guidance on this topic please see Appendix F.

18 Composition of a protest committee for rule 69 hearings

- 18.1 Under rule 69.2(b), the protest committee must consist of at least three people, to be appointed by the organizing authority or the race committee in the normal manner under rules 89.2(b) and 91.
- 18.2 If the matter that is the subject of the hearing is potentially controversial within a club, or if it is difficult finding members ready to serve, it may be sensible to seek at least one member (particularly the person who is to chair the hearing) from outside the club.
- 18.3 The RYA Racing Division can assist in recommending National or International Judges.

19 Protest committee witnesses

- 19.1 It is common for the person seeing the alleged conduct to be a member of the protest committee already. This can lead to the question of whether the person should serve on the protest committee dealing with the rule 69 report.
- 19.2 There is no conflict or requirement to stand down if the protest committee was already established, and with that person as a member of it, at the time of the alleged misconduct. However, a member of the protest committee who saw the incident in question must still state that fact in the presence of the *parties* (as required by rule 63.6). The protest committee member may then give evidence in the usual way, but is not required to do so.
- 19.3 If the protest committee remains constituted (at least three people) without that person being a member, it is best practice for that member to stand down for the hearing.
- 19.4 If that person happens to be the chairman, it may be appropriate to hand over the chair, even if the person remains on the protest committee. This would be especially appropriate if the behaviour being investigated was directed at the protest committee member concerned. In addition, if a fresh protest committee has to be set up, any person to be called as a witness should not be a member of the committee.

Procedure

20 Preparing the written notification

- 20.1 The competitor must be given written notification of the fact a hearing is to occur, the alleged misconduct and the time/place of the hearing.
- 20.2 An existing protest form - even if alleging rule 2 breaches - will not meet the requirements for written notification. A fresh notice must be prepared.
- 20.3 You are advised to use the model wording in Appendix J.

21 Reasonable time to prepare/time of hearing

- 21.1 Rule 63.2 requires that the competitor must be allowed reasonable time to prepare for any hearing.
- 21.2 When misconduct is learned of in a protest hearing, particularly if the facts are already well established for the purpose of rule 2, it would be appropriate to proceed directly to a rule 69 hearing once the written notification has been given to the competitor.
- 21.3 If the alleged misconduct occurs during a regatta, a hearing called for the same or following day will usually be satisfactory. It is unfair and inappropriate to leave serious allegations unheard for several days.
- 21.4 Misconduct occurring on the last day of a regatta (whether before or after prize giving) needs a hearing that day if at all possible.
- 21.5 If a competitor asks for more time to prepare, then this should be granted unless reasonable time has already been given. The protest committee should also refuse to grant extra time if this would extend the hearing beyond the end of the event.
- 21.6 If it is not possible to grant extra time before the end of the event and the committee feels the competitor must have extra time to prepare, then a hearing cannot be held and a report should be submitted to the RYA to act under rule 69.3 after the event.

22 Representation

- 22.1 A competitor is entitled to be represented at any hearing, and indeed this should be encouraged. It will prevent false accusations from an upset penalized competitor concerning the conduct of the hearing.
- 22.2 The competitor can be represented or assisted by anyone, including a friend, coach, parent or lawyer. That person can advise the competitor as to how to answer questions, can question witnesses and can sum up in favour of the competitor.
- 22.3 However, the competitor must answer any questions put to him/her personally.
- 22.4 If legal representation is involved, the chairman must be someone who is capable of firmly controlling the hearing.

23 Attendance by third parties/witnesses

- 23.1 Only a *party* to the hearing, as defined, is entitled to be present throughout. The procedure is not the normal 'adversarial' one of a boat v boat protest. It is inquisitorial, with the protest committee in the role of inquisitor. The only party is therefore the competitor in question.
- 23.2 Race committee members are no different from any other witness, and are present only to give evidence and be questioned.
- 23.3 As there is no 'prosecutor' as such, the identities of witnesses supporting the allegations must be established before the hearing, and steps taken to ensure their presence.
- 23.4 Witnesses are not permitted to question the competitor unless they are also a member of the protest committee.
- 23.5 There is nothing in the rules preventing the committee from allowing observers to be present (subject to the normal conditions attached to observing protest hearings). However, the committee must consider the personal nature of allegations under rule 69 and it may be appropriate to hold a closed hearing.

24 Objections to the protest committee

- 24.1 The competitor should be asked at the start of the hearing (after being introduced to all the members of the committee) whether or not he has any objection them.
- 24.2 An *interested party* (as defined in the RRS) should not be a member of the committee and neither should anyone who has had in the past strong individual disagreements or animosity with the competitor.
- 24.3 A person is not prevented from being a member of the protest committee because they witnessed the alleged misconduct occurring (see section 19)
- 24.4 An objection should only be upheld when the member is an *interested party*, there is a real danger of bias or where the committee is satisfied that the individual member in question cannot objectively consider the case.
- 24.5 Any objection (and the committee's decision on it) must be recorded in writing.

25 Conducting the hearing

- 25.1 The hearing must be conducted as required by the procedure for hearings that apply - rules 63.2, 63.3, 63.4 and 63.6.
- 25.2 In addition, it is vital that a record is kept as near as verbatim as possible of the procedure, questions, answers and statements. This task should be delegated to either a member of the committee or (preferably) to a secretary.
- 25.3 The protest committee should follow the checklist in Appendix C when conducting the hearing.

26 Warnings

- 26.1 Competitors usually take warnings seriously. If the protest committee believes from the demeanour of the competitor at the hearing that a warning would not be heeded, then it should penalize instead.
- 26.2 If the competitor's boat has already been given a non-excludable disqualification for breaking rule 2 (DNE), and if it were thought that this is sufficient punishment, then a warning would be appropriate.
- 26.3 A warning must not be reported to the RYA or another national authority.

27 Penalties beyond a warning

- 27.1 These are set out in rule 69.2(c)(2).
- 27.2 Individual competitors can be excluded from a race, or the remaining races or all races of the series, and boats can be disqualified from a race, or the remaining races or all races of the series, when appropriate.
- 27.3 Disqualification from a race that has already been sailed would be appropriate if the misconduct occurred during that race. In order for this to be reflected in the score, the boat must also be disqualified from that race, and the disqualification, identified as 'DGM' for scoring purposes, is not excludable and must be counted towards the results of the series.
- 27.4 If a competitor is excluded from races not yet sailed, the effect that this has on the boat's participation in future races will depend on the rules applicable to crew substitution at the event. Disqualification of the boat from future races would be appropriate when there was serious misconduct during a race either by the person in charge or by more than one crew member.
- 27.5 A combination of competitor exclusion from later races and boat disqualification from previous races is also permitted
- 27.6 If a hearing under rule 69 follows a penalization under rule 2, then the effect of a disqualification for the race concerned under rule 69.2(c)(2) will be a duplicated non-excludable penalty, but one that will now be reported to the RYA, which may be felt to be sufficient additional penalty.
- 27.7 However, in serious cases, a rule 2 DNE (which can only be for the race concerned) might quite properly be followed by a rule 69 DGM for later or all races.
- 27.8 When misconduct occurs after the last race of a series, there is now nothing from which a competitor can be excluded, and so the only option may be to disqualify the boat concerned.
- 27.9 The maximum penalty that can be imposed by the protest committee is exclusion or disqualification from the whole regatta or series, unless there is some other action possible within the protest committee's jurisdiction. There is no authority to impose a penalty relevant to any other event or series, even if it is organised by the same authority.

28 Penalties: other action within the protest committee's jurisdiction

- 28.1 When a competitor has been excluded from future races, the protest committee may wish as well to exclude the competitor from the event

location. This will depend on the relationships between the event, the competitor and the host club (see section 29), as well as any public access rights.

- 28.2 It could be appropriate (rather than to disqualify a boat or exclude the competitor) to penalize by worsening a boat's points score in a race or in the series – a form of 'negative redress'. Some events are scored on overall elapsed or corrected times, often over a number of legs, and it is against the policy of the event that boats are disqualified. Instead, boats are penalized in protests, not by disqualification, but by the award of time penalties. In such an event, a rule 69 hearing might result in a very heavy time penalty for a boat rather than exclusion of a competitor or a boat.
- 28.3 It would also be appropriate for the protest committee to send a report of its findings, as well as to the RYA, to any club or sailing body of which the competitor is a member, and the fact that the protest committee has acted and the national authority may also take action does not preclude any other body then taking action within its jurisdiction.
- 28.4 Taking some other action within the protest committee's jurisdiction may be instead of exclusion or disqualification, or it can be additional.
- 28.5 When a protest committee takes any other action within its jurisdiction, this ranks as a penalty (see rule 69.2(c)(2)), and must be reported to the RYA
- 28.6 When a competitor freely and sincerely offers an apology, it is appropriate for the apology, as well as being made directly to anyone who was affected by the misconduct, to be put in writing and posted on the official notice board.
- 28.7 A voluntary apology is not a penalty, and it might lead to the protest committee more towards a warning than penalization.
- 28.8 However, when an apology is not forthcoming voluntarily, and the protest committee requires one to be made, this ranks an 'other action' within its jurisdiction, which would give rise to the need to report the matter to the RYA, even if no other penalty is imposed

29 Referrals to clubs or classes post-hearing

- 29.1 The protest committee must decide (as part of the considering whether to give a penalty) whether to inform others (such as the RYA, a club or class) of the case or, indeed, refer it to them for further consideration/action.
- 29.2 The protest committee could decide to refer a case when:
 - 29.2.1 it feels that the penalty it would normally apply would disproportionately affect those are not involved (i.e. other crew members);
 - 29.2.2 the end of the event has already occurred and it is not appropriate to interfere with the results; or
 - 29.2.3 the committee feels the competitor's conduct merits further consideration outside the confines of the event (for example, it is appropriate the competitor should be excluded from club premises for the remainder of an event or the organizing authority should exclude the competitor from future events under rule 76.1).

- 29.3 In this case, the protest committee should provide the responsible officer of the club or class with a written report detailing the findings of the hearing, together with a recommendation for further action. Appendix J contains suggested contents of a report. The committee can suggest what it believes may be a suitable further penalty. The competitor should be provided with a copy of the report.
- 29.4 If the protest committee decides to refer a case for further action to a club or class, this would rank as "other action within its jurisdiction" under rule 69.2(c)(2) and a report must therefore be made to the RYA.
- 29.5 When the protest committee does not refer a competitor to a club or class following a rule 69 hearing, it is still often appropriate and polite that they are informed the result of the hearing (preferably in the form of the recommended notice in Appendix J).
- 29.6 If others are to be informed or if the case is to be referred, the competitor must be told when the protest committee announces its decision.

30 Reopenings

Requests for reopening should be considered under rule 66. The proceedings should be reconvened for instance if:

- 30.1 material new evidence becomes available;
- 30.2 it transpires that the competitor had a good reason for not attending the hearing but is now available; or
- 30.3 if the protest committee realises that it has made a mistake.

31 Common problems

A number of issues can arise at rule 69 hearings. The guidance below is intended to provide an overview of how the protest committee should approach the problems.

- 31.1 *The competitor was unaware of the allegations and did not receive the written notification of the hearing*

The protest committee is not entitled to proceed with the hearing. The competitor must be given the notification, given adequate time to prepare and the hearing rescheduled.

- 31.2 *The competitor does not turn up to the hearing*

You must try to establish the reason for non-attendance. Rule 69.2(a) requires a hearing to be rescheduled if the competitor has a good reason not to attend.

Ascertain who gave the competitor the notification of the hearing and confirm that it was received. Ensure no one in the race office or the protest committee was asked to postpone the hearing.

31.3 *The competitor asks for more time to prepare for the hearing*

Determine how long the competitor has had to prepare (i.e. from when they received the notification of the hearing). Is this length of time reasonable? Consider if the competitor needs to call specific witnesses or obtain certain evidence. In general, the more complex and serious the allegation, the more time that should be given to prepare.

If the protest committee is satisfied the competitor has had adequate time to prepare and continuing with the hearing will not prejudice the fairness of the process, the hearing should continue. Any continuing objection (or indeed an agreement by the competitor to proceed) should be noted in the record of the hearing.

31.4 *A representative of the competitor answers questions on his/her behalf*

This is not permitted. The competitor must personally answer any questions put to him or her.

31.5 *The competitor is a junior*

The chairman should inform the competitor's parents or guardians of the hearing, preferably in person.

The chairman must make sure the competitor understands the nature of the hearing and why it is occurring. Representation by a parent or other adult who can ask questions and speak for the competitor is necessary.

If the person representing the competitor is not a parent, the parents should be invited as observers.

The committee must take into account the age and experience of the competitor during their questioning. It may be appropriate to change the layout of the committee room from the usual 'courtroom' style.

Appendix K contains further information about dealing with misconduct in youth and juniors.

31.6 *The competitor becomes upset or emotional*

The chairman should allow the competitor a short break and then ask if they are happy to continue. If they say yes, this should be recorded in writing.

It is important that the protest committee allows the competitor a fair hearing. In the unlikely event the competitor cannot continue, then the hearing must be adjourned and rescheduled.

If the competitor is unrepresented and finds the process hard to cope with or understand, the protest committee should insist they bring someone to support them to the hearing.

31.7 *The competitor is disruptive and behaves unreasonably at the hearing*

The chairman must control the proceedings and explain to the competitor that the committee is not prepared to tolerate unacceptable behaviour.

If the competitor asks lengthy and irrelevant questions, the chairman should warn the competitor that only succinct and relevant questions should be asked. However, the committee must remember that not all competitors will be able to articulate themselves as well as would be preferred and allowances must be made.

If a competitor persists in dragging out the hearing, the chairman should impose a time limit by which the competitor must conclude his/her questions.

31.8 *It is alleged the procedures in rule 69 have not been followed or there is some other allegation of procedural impropriety*

The protest committee must determine this allegation before continuing with the hearing. Any fault in the procedure must be remedied before the hearing can continue.

If the protest committee is satisfied the procedures have been followed, it should explain why it believes this is so before continuing with the hearing. Any continuing objection should be noted.

31.9 *The competitor wishes to call a large number of witnesses*

The competitor is entitled to call as many witnesses as he/she wishes.

If the committee feels that the evidence is becoming repetitive, the chairman should ask the competitor what extra information the competitor feels the witnesses would provide. If the competitor says the same as already given, the chairman should politely remind the competitor there is no need to repeat evidence to the committee.

Decision-making

32 General

32.1 The 2013-2016 edition of the RRS contains a rule with a positive obligation on competitors (rule 69.1(a):

"A competitor shall not commit gross misconduct, including a gross breach of a rule, good manners or sportsmanship, or conduct bringing the sport into disrepute."

32.2 A breach of the rule can only be dealt with under rule 69 (i.e. not under the normal protest procedure for a breach of a rule).

32.3 The protest committee should follow the standard process used for judging – determine the facts found, then the conclusions in order to reach a decision. It is important to determine what actually happened before turning to the question of whether that conduct constituted or breach of sportsmanship or gross misconduct.

33 Standard of proof required

33.1 With effect from 1 January 2013, the standard of proof required to establish gross misconduct is the "comfortable satisfaction test" set out in rule 69.2(c). The test states that the competitor is guilty of gross misconduct if:

"...it is established to the comfortable satisfaction of the protest committee, bearing in mind the seriousness of the alleged misconduct, that the competitor has broken rule 69.1(a)..."

33.2 Any other standard of proof - in particular, "balance of probabilities" or "beyond a reasonable doubt" - can no longer be used.

33.3 The comfortable satisfaction test is a sliding scale but, in all cases, it is more than the balance of probabilities and less than proof beyond a reasonable doubt. Where the actual line falls in any particular case depends on its own facts. The more serious the misconduct in question, the more certain the protest committee must be that the misconduct occurred.

33.4 There is no definition of the word "comfortable" and it must be interpreted under the RRS in the way that judges ordinarily understand it in nautical or general use. Judges must rely on their knowledge and experience to know when they are comfortable that a competitor has committed gross misconduct.

33.5 A useful test is *"Are you uncomfortable, based on the evidence, with finding the competitor guilty?"*. If you are, then you must find the competitor not guilty.

34 Problem Issues

There are a number of factors that will affect the ability of the protest committee to make a decision on misconduct.

34.1 *The protest committee feels it did not receive enough evidence on a particular point*

If the point is central to the issue, the committee is not entitled to find the competitor guilty. It must obtain the evidence needed before proceeding.

If the point is not central to the question of misconduct, the committee must consider to what extent it is relevant to the question of guilt.

If the committee feels the point is irrelevant to the question of guilt, then it can proceed.

If the point is relevant, then more evidence must be received before proceeding

34.2 *The protest committee discovers evidence of another incident of misconduct*

Evidence of other misconduct is not to be considered as evidence meaning the competitor committed the original misconduct under investigation. The two are separate allegations and a fresh rule 69 process must be carried out in relation to the new misconduct.

Similarly, the fact that a competitor has committed misconduct in the past is not evidence that the competitor did so again.

34.3 *The competitor has alleged the investigation of the misconduct and the hearing has been biased or improperly carried out*

If the committee is satisfied it has carried out an unbiased and thorough process, then it can proceed. If not, then it must either conduct the process afresh or send a report to the RYA under rule 69.3 if it is unable to remedy the defects in the process.

34.4 *The competitor threatens legal action against the committee*

Whilst potentially disturbing to the individual committee members, the threat of legal action should not deter a protest committee. Provided the rules are followed and the competitor is accorded a fair and impartial hearing, there is limited recourse in law to the courts in the UK. The chairman should acknowledge the threat and record it but proceed.

It is essential that the rules and guidance are followed to the letter and a thorough record made of the proceedings. Using the checklist in Appendix C will help achieve this.

If time permits, the protest committee should speak to the RYA Racing or Legal Departments and seek advice there.

Appeals

35 The right of appeal

- 35.1 The competitor has the right to appeal to the RYA (as the national authority). Any such appeal would be determined by the Racing Rules Committee. However - as with protests and request for redress - no appeal can be based on the facts found by the protest committee.
- 35.2 Any appeal must be notified to the RYA within 15 days of the competitor receiving the original written decision.
- 35.3 Grounds for appeal might be:
 - 35.3.1 that a conclusion of misconduct and a decision to penalize (or warn) was not supported by the facts found;
 - 35.3.2 that the protest committee had found there was a gross breach of a racing rule, when in fact no such rule was broken; or
 - 35.3.3 the procedures of the protest committee were at fault.
- 35.4 The RRC can uphold, reverse or change the protest committee's decision.

36 Participation pending appeal

- 36.1 A competitor who has been excluded (or a boat which has been disqualified) from an event is not entitled to continue to compete even if they notify the protest committee of an intention to appeal. The original decision of the protest committee must be respected and a refusal to do so would constitute fresh misconduct.
- 36.2 The RYA has prescribed that the original decision of the protest committee shall govern the results of the event.

Recommended action/penalties

37 General

- 37.1 A list of recommended actions and penalties is in Appendix B.
- 37.2 The recommended actions and penalties are just those - recommendations. It is important that the protest committee considers the offence in the context of all relevant factors.
- 37.3 Use the recommended penalties as starting points and adjust accordingly for any aggravating or mitigating circumstances.
- 37.4 The following are some **aggravating** factors (the list is not exclusive) which should lead the protest committee to take more severe action:
 - 37.4.1 repeat offences;
 - 37.4.2 discriminatory conduct (e.g. on grounds of sex, race, disability, sexuality, age etc.);
 - 37.4.3 intentional damage to property;
 - 37.4.4 violence or aggression (whether actual or perceived by the victim);
 - 37.4.5 abuse of race officials or other volunteers;
 - 37.4.6 the competitor shows no remorse or perception that the misconduct was wrong;
 - 37.4.7 the misconduct is witnessed by a large number of people; or
 - 37.4.8 the sport/event has been brought into disrepute with the local community/wider public.
- 37.5 The following are some **mitigating** factors (the list is not exclusive) which should lead the protest committee to take less severe action:
 - 37.5.1 there is no evidence of prior misconduct and it is likely the competitor will not transgress again;
 - 37.5.2 the misconduct was reckless rather than intentional or wilful;
 - 37.5.3 non-malicious excess aggression arising from youth or inexperience of the sport;
 - 37.5.4 an isolated instance of knowingly breaking a rule without the intent to do so;
 - 37.5.5 the misconduct was not witnessed by a significant number of people; or
 - 37.5.6 the competitor shows genuine remorse for his actions.

Reporting to the RYA and its role

38 Report contents

38.1 Please use the guidance in Appendix J when making a report to the RYA.

39 Action on receipt of a report

39.1 Any report (either from a protest committee under rule 69.2 or made under rule 69.3) to the RYA should be submitted to the RYA Legal Manager within 7 days of the hearing.

39.2 The protest committee should make a recommendation to the RYA on whether or not further action is needed.

39.3 The report will be considered and initially investigated by the RYA Racing and Legal Departments. A recommendation is then made jointly to the RYA Chairman, the Chairman of Racing Committee and the Chairman of the RYA Tribunal.

39.4 A joint decision is then made as to whether the RYA will take further action under rule 69.3. Both the competitor and the committee will be informed of the RYA's decision and its reasons.

39.5 A copy of the decision will also be sent to the Fair Sailing Team of the Racing Rules Committee in order for any future guidance to be updated or best practice issued in light of the protest committee's experience.

Appendix A: Examples of Gross Misconduct

A Examples of Gross Misconduct

- A.1 Engaging in any activity which brings the sport into disrepute
- A.2 Bullying, discriminatory behaviour and intimidation
- A.3 Physical or threatened violence
- A.4 Deliberate damage or abuse of property (including a boat) or theft.
- A.5 Deliberately disobeying the reasonable instructions of event officials
- A.6 Repeated breaches of rule 2
- A.7 Inciting others to break rule 2
- A.8 Deliberately breaking a racing rule with the intention of gaining an advantage
- A.9 Deliberate interference with another competitor's equipment
- A.10 Repeating a measurement offence (intentionally or recklessly)
- A.11 Lying at a hearing
- A.12 Other forms of cheating, such as falsifying personal, class or measurement documents, entering a boat known not to measure, missing out a mark to gain places etc.
- A.13 Foul or abusive language intended to offend*

* Bad language (including that not directed towards an official) has to be judged in this context. If you are uncomfortable with the language being used, then action should be taken. It is quite proper for clubs and organisers to make clear before an event that the use of inappropriate language will lead to rule 69 action. If the organisers have made this statement, then the protest committee should be prepared to enforce the standards expected.

However, if an event or club has tolerated such language in the past, then a single incident of bad language should not trigger rule 69 action. This is not to condone such language, but the RYA supports the principle that clubs and events must set and improve their own standards.

Foul and abusive language towards race officials should be considered under the dissent guidance found in Appendix D.

Appendix B: Recommended Penalties or Action

B **Recommended Penalties/Action**

- Level 0** Interview with competitor, but no hearing
- Level 1** Warning, but no penalty
- Level 2** Increase the boat's points score
- Level 3** Disqualify the boat or exclude competitor from race(s)
- Level 4** Disqualify the boat or exclude competitor from event
- Level 5** Disqualify the boat or exclude competitor from event and recommend further action by the RYA

Type of misconduct	Range
Engaging in any activity which brings the sport into disrepute	1 - 5
Bullying, discriminatory behaviour and intimidation	3 - 5
Physical or threatened violence	4 - 5
Deliberate damage or abuse of property (including a boat) or theft	3 - 5
Deliberately disobeying the reasonable instructions of officials	0 - 5
Repeated breaches of rule 2	1 - 5
Inciting others to break rule 2	1 - 5
Deliberately breaking a racing rule with the intention of gaining an advantage	0 - 4
Deliberate interference with another competitor's equipment	3 - 5
Repeating a measurement offence (intentionally or recklessly)	3 - 5
Lying to a hearing	3 - 5
Other forms of cheating such as falsifying personal, class or measurement documents, entering a boat known not to measure, missing out a mark to gain places etc.	0 - 5
Foul or abusive language intended to offend	0 - 4

Appendix C: Rule 69 Hearing Checklist

C Checklist for the chairman conducting rule 69 hearings

Name of competitor:

Boat:

Event:

Date of hearing:

Protest committee members:

C.1 Introduce the members of the protest committee by name and state any relevant judging qualifications [] (tick)

C.2 Ask if there are any objections to those members and if necessary rule on any objection. Record the answer.

Objections?: Yes/No (delete as applicable)

If yes: upheld / dismissed (delete as applicable)

Reason:

C.3 Ask if sufficient time has been given for preparation. Record the answer. If necessary, determine how much extra time should be allowed

Extra time requested: Yes / No (delete as applicable)

If yes: granted / refused (delete as applicable)

Reason:

C.4 Ask if the competitor has received the written notification and understands the nature of the allegations. Record the answer. If the competitor does not speak English as a first language, determine if a translator is required.

Competitor has received written notification [] (tick)

Competitor understands allegations [] (tick)

C.5 If not already represented, ask the competitor if they wish to be represented. If they do no, explain that they can change their mind at any during the hearing.

Competitor represented: Yes / No (delete as applicable)

If yes, name of representative:

If no, competitor understands right to representation: [] (tick)

- C.6 If represented, explain that the representative can consult with the competitor, ask questions for him and sum up for him, but cannot answer questions on behalf of the competitor. [] (tick)
- C.7 Explain that the allegation is at the moment just that - an allegation. Explain the purpose of the hearing is to determine what has happened and whether misconduct has been committed. [] (tick)
- C.8 Explain to the competitor what the possible outcomes might be if the allegations are proven - a warning, penalisation and potential further action by the RYA (or if a foreign competitor – his/her own national authority). [] (tick)
- C.9 Hear the main witness supporting the allegation, and allow the competitor to question the witness, who may then be questioned by the committee. That person should then leave the hearing, unless he or she is a member of the protest committee, whose presence throughout has been foreseen.

Name of witness:

Evidence given by witness: [] (tick)

Witness questioned by competitor: [] (tick)

Witness questioned by committee: [] (tick)

- C.10 Hear the evidence of the competitor, who may then be questioned by the committee.

Evidence given by competitor: [] (tick)

Competitor questioned by committee: [] (tick)

- C.11 Hear, one by one, other witnesses supporting the allegations, and allow the competitor to question each witness, who may then be questioned by the committee.

Witness Number	1	2	3	4
-----------------------	----------	----------	----------	----------

Evidence given by witness:	[]	[]	[]	[]
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Witness questioned by competitor:	[]	[]	[]	[]
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Witness questioned by committee:	[]	[]	[]	[]
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Names of witnesses:

1.

2.

3.

4.

C.12 Hear, one by one, the witnesses called by the competitor: allow the competitor to question each witness, who may then be questioned by the committee.

Witness Number	1	2	3	4
Evidence given by witness:	[]	[]	[]	[]
Witness questioned by competitor:	[]	[]	[]	[]
Witness questioned by committee:	[]	[]	[]	[]

Names of witnesses:

- 1.
- 2.
- 3.
- 4.

C.13 Ask the competitor to sum up his case. [] (tick)

C.14 Ask the competitor and all others present to withdraw, and confer. [] (tick)

C.15 Find the facts, writing down exactly what happened and/or what was said. If the use of bad language is relevant to the case, write down the exact words believed to have been used. As with a protest, avoid making conclusions in the facts found. [] (tick)

C.16 Conclude in writing whether the facts constitute a gross breach of a rule (in which case, state the rule) or of good manners or sportsmanship, or a bringing of the sport into disrepute. [] (tick)

C.17 Recall the competitor to announce whether the allegation is upheld or dismissed. If it is dismissed, close the hearing. If it is upheld, ask the competitor whether there are any mitigating circumstances the committee might consider when deciding whether to warn or penalize. Receive any apologies. [] (tick)

C.18 Ask the competitor to withdraw again, and decide whether only to warn, or to penalize, in which case decide the penalty. [] (tick)

C.19 Recall the competitor, and announce the decision. Repeat or explain it if necessary, but avoid getting into further argument if the competitor is upset and does not accept the decision. [] (tick)

C.20 Explain the right of appeal to the RYA. [] (tick)

C.21 Advise the race committee of the decision if it affects the scores for the event, or if a competitor is to be excluded for the remainder of the event. [] (tick)

C.22 Post a notice on the official notice board, giving the result of the hearing, but not facts or conclusions. These are confidential, and their publication could give rise to legal action. It is recommended you use the wording in Appendix J.1.3. [] (tick)

C.23 If a penalty is imposed, notify the facts found, conclusions and decision to the RYA. Include the names of the committee and the address of the chairman/chairwoman.

Record that the competitor was asked whether sufficient time had been given for preparation, and whether there was any objection to the composition of the committee, noting the answers given. Advise also (if different), the national authorities of the competitor and of the boat owner. It is recommended you use follow the guidance in Appendix J [] (tick)

- C.24 Retain all records* for at least a year (preferably with the organizing authority). [] (tick)

.....
Panel Chairman Date

** the records should include the original report to the protest committee (if written - if not, produce a note of it), the written notification to the competitor, this checklist, the notes of the hearing, the written facts, conclusion and decision and the notice posted (if any) on the official noticeboard*

Appendix D: Dissent Guidance

D Dealing with Dissent

- D.1 Unacceptable dissent is defined as the dispute of a race official's action or decision in a manner which implies incompetence, prejudice or insult, and which is offensive to the race official concerned.
- D.2 Expressing a difference or disagreement are acceptable behaviours. Abuse and rebellion are unacceptable behaviours. Expressing opposition is a marginal behaviour. Dissent can occur on-the-water, ashore or in the Protest Committee (PC)/Jury room, and sometimes race officials may find it difficult to cope with a situation without appearing too authoritarian.
- D.3 There can be a wide range of levels of dissent, and there are also differences in the perceived level of acceptance of dissent in different forms of racing (youth events, professional match racing etc).
- D.4 Nevertheless, the RYA Racing Charter states that 'foul or abusive language, intimidation, aggressive behaviour or lack of respect for others and their property will not be tolerated'. This applies to competitors, race officials, coaches and other advisors. In addition, abuse of officials is identified in the RYA Guidance as 'behaviour that would justify action under Rule 69'.
- D.5 It is important that all race officials work together to tackle the dissent when it is encountered. Failure to confront unacceptable behaviour at the time can lead competitors to think it is acceptable and repeat it in the future.

Event Officials

- D.6 All event officials (whether or not a judge or umpire) are entitled to be treated with fairness and respect. Almost all will have given up their free time to officiate for no reward other than the fact they enjoy the sport.
- D.7 It is helpful for the Chief Umpire or PC/Jury Chairman to remind the organisers that any problems with competitors should be reported to them.

Hearings

- D.8 The ISAF International Judges Manual states that, if a party to a protest requires clarification, this should be given immediately, but no further discussion should be permitted at this time. It may be that, if a competitor remains unclear or unsure about a decision, the judges have not written a clear enough decision (facts found, conclusions, decision etc).
- D.9 Whether or not, and to what extent, discussion with a dissatisfied party at a future time should be permitted will depend on the experience and confidence of the chairman and members of the PC/Jury. Permitting an informal discussion with the PC/Jury, and setting a time for this discussion, in response to dissatisfaction when the protest decision is announced can often defuse a stressful atmosphere; conversely, refusing any future discussion can often exacerbate the bad feeling.
- D.10 Alternatively, a PC/Jury member may be appointed to explain informally a decision. If this approach is adopted, one PC/Jury member should explain

the decision and another judge should facilitate the discussion and ensure it remains cordial and to the point.

Umpiring/On-the-Water Judging

- D.11 The ISAF International Umpires Manuals state that umpires have an obligation to explain their calls to all competitors and umpires. This principle covers match racing, team racing, umpired fleet racing and rule 42 judging.
- D.12 Whenever two people, umpires or competitors, think that different things happened, they are unlikely to change their mind. We all see things differently, and it is important to bear this in mind. It is important to distinguish between differences of opinion relating to what happened (facts) and interpretations of the rules.
- D.13 Explanations should be restricted to giving the reason for the call - for example, "We considered you had no need to change course to avoid the port-tack boat". Any rational discussion on the applicable rules and 'what if' questions should be answered. If a competitor disputes the facts, it can be useful for the umpires to remind the competitor that they can only see an incident once and from the position they were in at the time.
- D.14 Experienced racers use this discussion to confirm that their understanding of the rules is the same as the umpires, and therefore the conversation is likely to be quick and civil.
- D.15 Less experienced racers are more likely to want to prove that 'they were right' and the conversation can easily turn into an argument. In such cases, the umpire must avoid getting pulled into an argument concerning the facts and should finish the conversation by advising the crew "See us when ashore".
- D.16 Umpires should be aware that emotions can often be running high at the end of a race and it may be best to wait a couple of minutes before conversing with the crew. Indeed, unless a competitor requests a discussion, it is sometimes best for the umpires not to start one at this time.
- D.17 Umpires should be prepared to own up to any errors quickly and graciously. Doing so will greatly increase the respect of competitors for the umpires.
- D.18 Umpires do not have to tolerate any form of abuse, but turning a blind eye in moments of stress may often be a better approach. It is usually more helpful to speak to the competitors about such breaches away from the incident (in both time and distance).
- D.19 Taking further action depends on the words, the manner in which they have been spoken, and any other related actions of the crew of the boat. If they merely express unhappiness or disappointment, or that in their opinion the decision was wrong, then a penalty is not appropriate.
- D.20 However, if the total effect is to convey that the umpires are incompetent or prejudiced, a penalty may be justified, whether the meaning is directed only at the umpires or also to others nearby.
- D.21 If the meaning is clearly insulting to the umpires, a penalty should be imposed and, if repeated or when particularly offensive, a rule 69 report should be made and a hearing considered by the complete PC/Jury. What one umpire may perceive as 'banter' may be regarded by others as unacceptable.

Ignoring abuse or bad language means competitors see the conduct as acceptable and it may be repeated in future, diminishing the authority of race officials in general and potentially discouraging volunteers from agreeing to serve as race officials.

Race Management Teams

- D.22 Most members of the race management team are in close proximity to competitors as they carry out their tasks. Sometimes dissent occurs which can lead to unfortunate incidents, especially in the heat of the moment.
- D.23 It is wise not to be drawn into debate or argument on the water but it is recommended in the ISAF & RYA Race Management Manuals for the race officer (and other members of the race management team, if appropriate) to make themselves available ashore each day to listen to the competitors and explain (or apologise!) for their actions. The time and place for this should be given in the briefing or on the official notice board.
- D.24 However, race management team members do not have to tolerate any form of abuse and, if something that has been said to them is clearly insulting, they should speak to the race officer whose job it is to speak to the competitor and decide whether to protest the competitor under rule 2 or make a rule 69 report to the Protest Committee/Jury.

Appendix E: Principles of Sportsmanship and Fair Play

E **Dealing with Dissent**

E.1 Rule 2, Fair Sailing, refers to the recognised principles of sportsmanship and fair play. The recognised principles of sportsmanship and fair play include the following (which is a non-exhaustive list):

Respect for the rules

Breaches of this principle include:

Knowingly breaking a rule and not taking a penalty

Deliberately breaking a rule

Intentionally breaking a rule to gain an unfair advantage

Collusion with another competitor to ignore rule breaches which may aggrieve or disadvantage other competitors

Gamesmanship, defined as behaviour of questionable fairness but not strictly illegal tactics

Respect for other competitors

Breaches of this principle include:

Bullying, intimidating or harassing others

Verbal abuse, unnecessary shouting or foul language

Ungracious acceptance of defeat

Sailing to benefit another competitor to the detriment of own position (not applicable in Team Racing events)

Deliberately making misleading hails

Respect for race officials

Breaches of this principle include:

Use of language that might convey incompetence, prejudice or insult

Dissent against a race official decision

Respect for property

Breaches of this principle include:

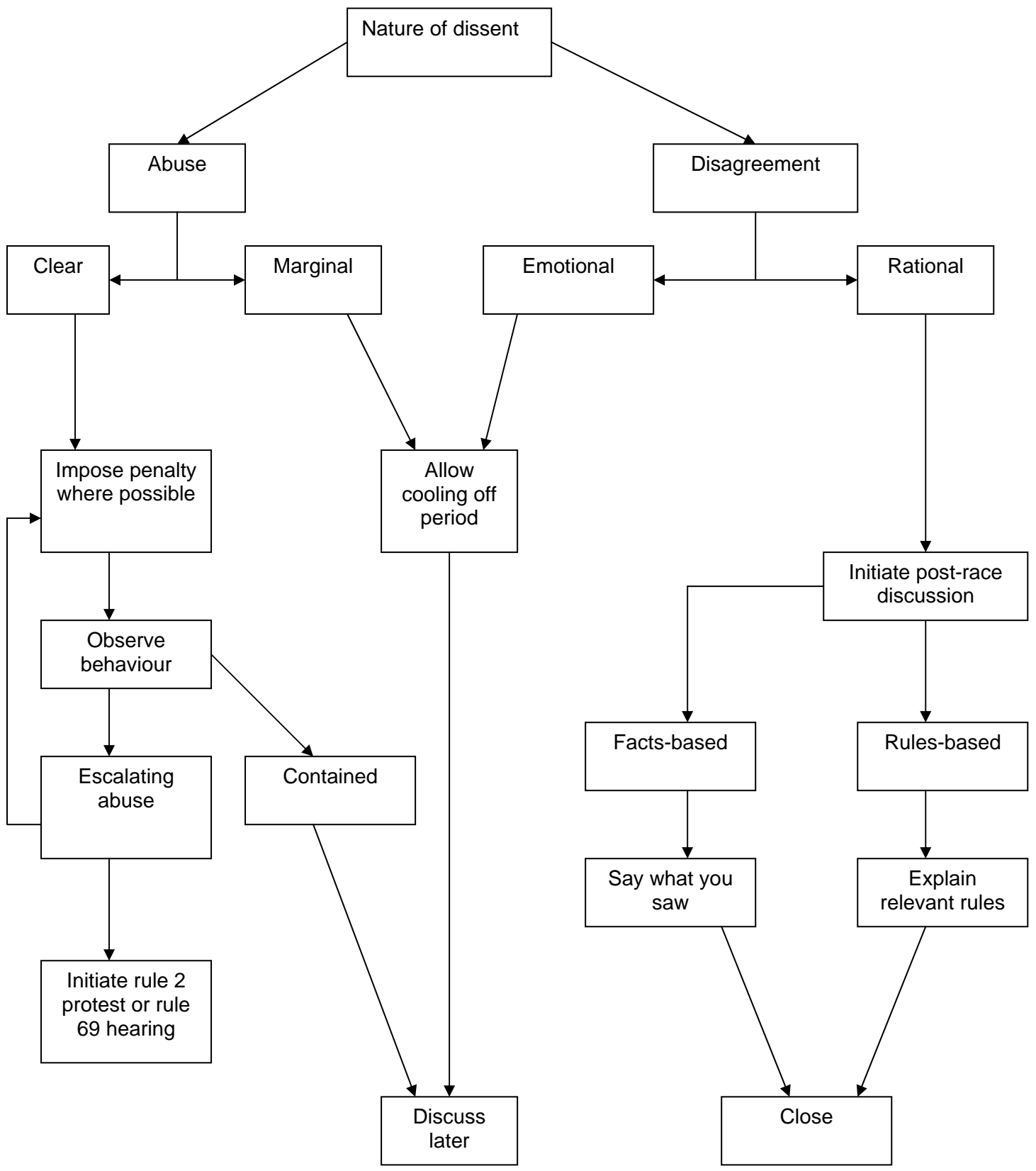
Reckless sailing likely to result in damage or injury

Abuse of boats or equipment supplied by an Organizing Authority or belonging to a competitor

Careless damage to property

- E.2 Rules C8.3(c) and D2.3(g) allow match and team race umpires to initiate penalties for breaches of sportsmanship. Umpires must decide whether behaviour breaches these rules, and/or rules 2 and 69, and what penalties will be applied.
- E.3 Umpires should refer to the examples of breaches of the principles of sportsmanship and fair play in E.1 above, and Calls MR13 and M8, in deciding whether a behaviour breaks rules C8.3(c) or D2.3(g).
- E.4 If a breach of sportsmanship is determined to have occurred during a race or match, then the umpires will apply a penalty without warning under rules C5.2, C5.3, or turns under rule D2.3, for a first breach. For repeated or gross breaches of sportsmanship during races or matches, the umpires will apply a penalty under rule C5.4 or a black flag penalty under rule D2.4(c) and report the incident to the protest committee who will then decide if escalation under rule 69 is appropriate. A protest under rule 2 will not normally be applied for breaches of sportsmanship during races or matches.
- E.5 For breaches of sportsmanship that occur outside races or matches, the umpires will apply rule 2 or 69 by reporting the incident to the protest committee who may then act under rule 60.3 or rule 69.
- E.6 Race officials may have to deal with a dispute against a race official decision that may constitute a breach of sportsmanship through dissent.
- E.7 By reference to this guidance on dissent, the race official will first determine whether the observed behaviour is acceptable, marginal or unacceptable.
- E.8 For acceptable behaviour, the race official will initiate a post-race discussion of the incident. The explanation will include the facts observed and the relevant rule leading to the decision or call. If the facts observed are disputed during the discussion, the race official will restate what was observed and close the discussion. If the rule application is disputed, the race official will explain why a particular rule was applied to reach a decision. If the race official believes he has made an error, an apology will be made.
- E.9 For marginal behaviour, the race official will allow a cooling-off period before attempting to address the dispute. This will involve a reply such as "we will discuss this later/ashore". If a race official is unsure whether behaviour is unacceptable, the benefit of doubt will be given to the competitor and the behaviour treated as marginal.
- E.10 For clearly unacceptable behaviour, the race official will deem the dissent a breach of sportsmanship and apply the relevant rules. These may include an on-the-water penalty, use of a black flag, initiating a rule 2 protest or a rule 69 hearing depending on the severity of the dissent. Following the imposition of any on-the-water penalty, the race official will critically observe a competitor's next behaviour. Any escalation of dissent will be penalised again as a separate incident.

Dissent Flowchart



Appendix F: Rules 2 and 69

F The interaction between rules 2 and 69

- F.1 Sailing is a self-policing sport, but the enforcement of rules 2 and 69 is the responsibility of all those involved - competitors, race officials, coaches, organisers, the RYA as the national governing body or other supporters. All race officials are expected to uphold the principles of the RYA Racing Charter.
- F.2 Allowing unacceptable behaviour to go unchecked can implicitly condone it and does not protect those sailors who have chosen to compete within the rules. The promotion of fair play and sportsmanship is the responsibility of all those involved in our sport.
- F.3 Some misconduct is clearly 'rule 2' (initially, at least), some is clearly 'rule 69'. Some can be either. This guidance aims to assist race officials in the application and administration of both.

Rule 2

- F.4 Rule 2 is one of the five fundamental racing rules. It places an active duty on a boat to compete in accordance with the principles of fair play and sportsmanship.
- F.5 Rule 2 concerns the actions of a boat (which includes its crew) and of its owner. Any penalty attaches to the boat, not an individual. It is therefore primarily a "field of play" rule concerning behaviour on the water. Rule 2 is not suited for events occurring ashore or serious (or repeated) offences on the water. In these circumstances, it is appropriate to lodge a report with the protest committee under rule 69.
- F.6 Rule 2 places an emphasis on "recognized principles" of fair play and sportsmanship. How do officials recognise and enforce them?

Rule 2: Recognized Principles

- F.7 With one exception, the rules deliberately do not define these principles. It is necessary to take each situation in context. Nevertheless, the principles in Appendix E (which are examples and not a definitive list) are generally accepted as unsportsmanlike.

Rule 2: Enforcement

- F.8 A race official must be sure in his/her own mind that unsportsmanlike behaviour has taken place, but race officials should not assume that someone else will take action and therefore they do not need to. The final decision is for the protest committee, but it cannot make a decision unless a protest is submitted.
- F.9 A boat, the race committee or the protest committee can protest for a breach of rule 2, on its own, or as part of a protest under other rules. In addition, a protest committee can penalize any party to a hearing under rule 2 based on evidence at the hearing of a protest brought under other rules.

- F.10 A protest under rule 2 must comply with the normal requirements for protests and be delivered in time. If the protest committee is satisfied that it has been clearly established that a boat, or her owner, has broken the recognised principles of sportsmanship, then the boat is to be penalised by disqualification, which is not excludable from the series score. This is a serious penalty, but has no effect or consequences for the boats or competitors involved beyond that of the race in question.
- F.11 The requirement for the breach to be 'clearly established' means that the standard of proof required is higher than the 'balance of probabilities' that applies to most boat vs boat protests.
- F.12 In the context of umpired racing, when the umpires are sure that a breach of sportsmanship has taken place, they should penalise the boat concerned.

Rule 69

- F.13 Rule 69 will normally apply to events that happen ashore, and, (as well as or instead of rule 2), to gross misconduct by individual competitors while racing. Typical rule 69 offences are included in Appendix A.

Which rule to use if there is a choice?

- F.14 The outcome of a rule 69 hearing may be more severe than a rule 2 DNE. But it may also be less severe, in the form of a non-reported warning. When a protest committee can clearly foresee from the alleged facts that a warning might be more appropriate than a DNE, it should choose rule 69 at the outset if it has the choice. It will have no choice if it upholds a protest under rule 2 that has already been lodged.
- F.15 Conversely, if a gross breach of rule may have occurred, it is recommended to begin with a normal protest hearing if possible, under rule 2 and any other appropriate rule, to find facts and (if appropriate) to penalize a boat, before deciding to proceed to a new hearing under rule 69 against an individual, based on those findings.
- F.16 A rule 69 hearing can only be called by the protest committee – whether on a report by one of its members or from a report by a competitor, race official or any other person.

RULE 2 AND RULE 69 – SUMMARY OF DIFFERENCES

	<u>Rule 2</u>	<u>Rule 69</u>
<u>Objective</u>	Clear violation or recognised principles of sportsmanship and fair play	Gross breach of a rule, good manners or sportsmanship: or bringing the sport into disrepute
<u>Classification</u>	Decided as a protest against a boat	Not decided as a protest, but is an action against a competitor
<u>Initiation</u>	There has to be a valid protest, which may involve time limits. Can be brought by the protest committee, the race committee or another competitor. If relevant facts arise in a valid protest under other rules, no new protest is needed against a party to the hearing in order to penalize.	Separate written notification required, no time limit. Can only be brought by the protest committee or by the RYA. If relevant facts emerge from a protest under other rules, a fresh hearing with written notification is required.
<u>Protest Committee</u>	No minimum number	At least three members
<u>Standard of Proof</u>	Clear establishment that a recognised principle of sportsmanship and fair play has been violated	The comfortable satisfaction of the protest committee that the alleged misconduct has occurred, bearing in mind the seriousness of the alleged misconduct.
<u>Outcome</u>	Dismissal or DNE. Does not preclude proceeding to a rule 69 action. No report required.	Dismissal: warning: a range of penalties: any penalty to be reported to the RYA and possibly others, and the RYA may act further.
<u>Appeals</u>	Decisions and procedures, but not facts, may be appealed. No power of the RYA to change a properly imposed DNE.	Decisions and procedures, but not facts, may be appealed. No power of the RYA to change a penalty to a warning (or <i>vice versa</i>)

Appendix G: Child Protection and Rule 69

G Guidance on child protection issues and the use of rule 69

- G.1 The introduction of the Anti-Bullying Policy for Junior and Youth Racing and the guidance and reporting procedure contained in the RYA Child Protection Policy do not prevent a protest committee from calling a hearing to investigate alleged misconduct which has taken place.
- G.2 However, it is important that all race officials recognise that in some cases it will be inappropriate to conduct investigations and/or rule 69 hearings. If it is clear that there has been a one-off incident that can be dealt with under rule 69, then the protest committee should proceed in the normal manner with a hearing and impose any penalty it deems appropriate. Any action beyond a warning must be reported to the RYA under rule 69.2(d).
- G.3 If the RYA receives a number of reports of rule 69 hearings relating to the same sailor or official which appear to indicate a pattern, this should be looked into by the relevant RYA Manager or Child Protection Co-ordinator as appropriate.
- G.4 A protest committee must always be mindful of its jurisdiction, which only extends to cover the event in question (e.g. from registration to prize giving) and any incidents immediately prior or after it. It is not within the power of the protest committee to inquire into reports of misconduct which occurred at other events, training camps, squad training etc. Any such concerns (such as bullying, whether by an adult or another child, that fits the definition of bullying in the RYA Policy) should be reported to the relevant RYA Manager.
- G.5 Any allegation of child abuse or neglect (no matter how or from whom received) must be referred to the Child Protection Officer for the event (either from the club or class, or if there is none, to the RYA Child Protection Co-ordinator). Child abuse can be peer bullying and it is vital that the race official works closely with the Child Protection Officer over any such allegations.
- G.6 It is not an option to ignore such allegations. It is for the relevant Child Protection Officer (and not anyone else) to make a decision as to whether a matter should be referred to the Police or Social Services.
- G.7 There may be occasions where the protest committee wishes to refer a matter to the Child Protection Officer but also wishes to carry on with its investigation. In these situations the protest committee must proceed with extreme caution.
- G.8 If it is clear that the matter reported to the Child Protection Officer is in no way related to an allegation of sporting misconduct, then the protest committee can proceed separately with the sporting misconduct complaint if the Child Protection Officer is happy for this to occur.
- G.9 If the Child Protection Officer is not happy, or if they are not available, the protest committee should not proceed. It will always be open to the RYA to proceed under rule 69.3 if the child protection matter is dropped later on.
- G.10 The reason for this is that it will not always be in the best interests of the young sailor, who has chosen not to report any suspected abuse, neglect or bullying earlier, for a full investigation to take place during competition, while

they are under pressure to perform and particularly where the alleged suspect is present.

- G.11 Police and Social Services have trained personnel who should be the only ones to interview the child. The worse case scenario is that a race official, however well-meaning and despite acting in good faith, will pervert the course of justice by interviewing a child or investigating a serious complaint in the incorrect manner.

Appendix H: Police Involvement and Rule 69

H Guidance on dealing with police investigations and rule 69 issues

- H.1 A protest committee may be faced with the situation where an incident being investigated is also subject to a report to the police.
- H.2 The protest committee should not delay any investigation and/or hearing merely because the police are involved. The police investigate matters under the criminal law and a protest committee investigates matters under the Racing Rules of Sailing.
- H.3 If a protest committee has concerns about continuing to investigate a situation (for example if the offence is unusually serious or there is heavy police involvement), then the committee should seek the advice of the police involved and (if time permits) the RYA Legal Department.
- H.4 If the police request that a protest committee ceases its investigations, then it should do so and report the matter promptly and in full to the RYA.
- H.5 This guidance does not apply to any issues of child protection which must be dealt with under the guidance in Appendix G.

Appendix I: Exclusion of Boats and Competitors under Rule 76

I Exclusion of boats and competitors under rule 76

- I.1 Where misconduct occurs before the start of racing - or if there is genuine cause prior to an event to believe a competitor will commit misconduct - the powers of rule 76 can be used to exclude the competitor from the event prior to it starting.
- I.2 The organizing authority or the race committee has the power under rule 76.1 to reject or cancel the entry of a boat or the entry of any competitor. This power only exists before the start of the first race and a reason must be provided.
- I.3 There are limitations on the use of this power:
 - I.3.1 it cannot be used on advertising grounds, provided the competitor is complying with the ISAF Advertising Code;
 - I.3.2 it cannot be used at a world or continental championships if the stated quota of boats/competitors has not yet been met without first seeking the permission of the international class association (or the Offshore Racing Council) or the ISAF; and
 - I.3.3 despite not being entered, a boat or competitor is entitled to seek redress against a decision to exclude through a normal redress hearing based on rule 62.1(a).

Appendix J: Model Forms

J **Model forms and notices**

- J.1 This section contains the following model forms and wording for use by protest committees in relation to rule 69 issues:
 - J.1.1 Notification letter to competitor of rule 69 action
 - J.1.2 Report to the RYA
 - J.1.3 Notice for the official notice board following a hearing
- J.2 In addition, the checklist in Appendix C of this Guidance should be photocopied and use as a guide for the chairman of any hearing.

Wording for letter of notification to competitor

Dear [name],

NOTIFICATION OF ACTION UNDER RULE 69.2

I am writing to inform you that the Protest Committee of this event has received a report under rule 69.2 alleging that you have broken rule 69.1(a) by committing Gross Misconduct.

The report alleges that [*insert a description of the allegation*].

The Protest Committee has decided to conduct a hearing under rule 69.2 to determine if these allegations are true, and if so, to decide what action to take.

You are required to attend a hearing on [*date*] at [*time*] in [*location*].

You may bring someone to represent you at the hearing. You are also entitled to call your own witnesses, but it is your responsibility to ensure that the witnesses are present at the time of the hearing.

If you have any questions concerning the hearing or any other aspect of the rule 69 process, please ask the [*the chairman/jury secretary*].

Yours,

NOTES FOR USE OF WORDING:

- Add relevant information into the square brackets
- The description of the allegation must be sufficiently full to allow the competitor to identify the alleged incident and prepare for the hearing.
- It is highly recommended to deliver the notification to the competitor personally.
- Keep a copy of the letter

Contents of report to the RYA

A report to the RYA should contain the following information:

- The name, dates and type of event
- The name, address and contact information of the competitor
- The name, judging qualification (if any) and contact information of the chairman of the protest committee
- The names and judging qualifications (if any) of the rest of the committee hearing the case
- Confirmation the competitor had enough time to prepare for the hearing
- Confirmation the competitor was aware of the right to be represented
- The facts found by the committee
- The conclusion and decision of the committee
- The penalty applied
- Details of any subsequent competitor action (i.e. apology)
- Any mitigating reasons put forward by the competitor
- Any aggravating circumstances which made the misconduct more serious
- The recommendation of the protest committee to the RYA re. further action

Send the report to the RYA Legal Manager at RYA House, Ensign Way, Hamble, SO31 4YA.

PROTEST COMMITTEE NOTICE [#] - RESULT OF RULE 69 HEARING

On [date], the Protest Committee of this event conducted a rule 69 hearing against [name].

If allegations not proven:-

[As a result of this hearing, the Committee has determined that [name] has not committed Gross Misconduct under the Racing Rules of Sailing.]

If allegations proven:-

[As a result of this hearing, the Committee has determined that [name] has committed Gross Misconduct under the Racing Rules of Sailing.]

If only a warning issued:-

[The Committee has issued [name] with a warning and no further action will be taken by the Committee.]

If a penalty was imposed:-

[The Committee has penalized [name] by [insert details of penalty].

The penalty will be reported to the RYA.]

NOTES FOR USE OF WORDING:

- Add relevant information into the square brackets
- Omit wording in italics
- Do not add details of the nature of the misconduct or include the facts found. Only notify competitors of the result of the hearing.
- If in doubt over the contents of the notice, do not post it.
- Keep a copy of the notice

Appendix K: Youth and Juniors

K Dealing with misconduct by youth and junior competitors

K.1 When competitors are very young or particularly inexperienced, then it can be necessary to take a slightly different approach to dealing with misconduct.

K.2 We have already stated the following above:

The chairman must inform the competitor's parents or guardians of the hearing, preferably in person.

The chairman must make sure the competitor understands the nature of the hearing and why it is occurring. Representation by a parent or other adult who can ask questions and speak for the competitor is necessary.

If the person representing the competitor is not a parent, the parents (if available) should be invited as observers.

The committee must take into account the age and experience of the competitor during their questioning. It may be appropriate to change the layout of the committee room from the usual 'courtroom' style.

K.3 These principles should also be adopted for any competitor-official interaction. The younger (and more inexperienced) the competitor, the more time and thought must be given by the official about the appropriate method of dealing with unacceptable behaviour.

K.4 For very young competitors, the intimidating nature of a rule 69 hearing may be counter-productive in attempting to address the misconduct in question. Without prejudging any issue, the protest committee must consider the alleged conduct and how it should be dealt with. It is always open to escalate the process if the matter is more serious than first thought, but it is much harder to stop a rule 69 hearing and opt for a more informal option later.

K.5 For event-related behaviour which is questionable or at the lower end of the range of misconduct, then it would be appropriate for a race official (normally a judge or umpire) to speak to the competitor with his or her parents, guardian or coach, making clear what has happened, why it is wrong and what the consequences of repetition will be. The race official should be accompanied by another official.

K.6 For more serious misconduct, then this process should be conducted before the protest committee by way of a formal interview.

K.7 For severe misconduct that must be addressed with a penalty, then a rule 69 hearing or a protest under rule 2 must be held.

Appendix L: Social Media

L **Social media**

- L.1 With the advent of social media (Facebook, Twitter, etc.), it has become easier for competitors to publish information about an event quicker than before. This brings with it the inevitable problem that a competitor, dissatisfied with a decision or event, turns to social media as a way of venting their anger.

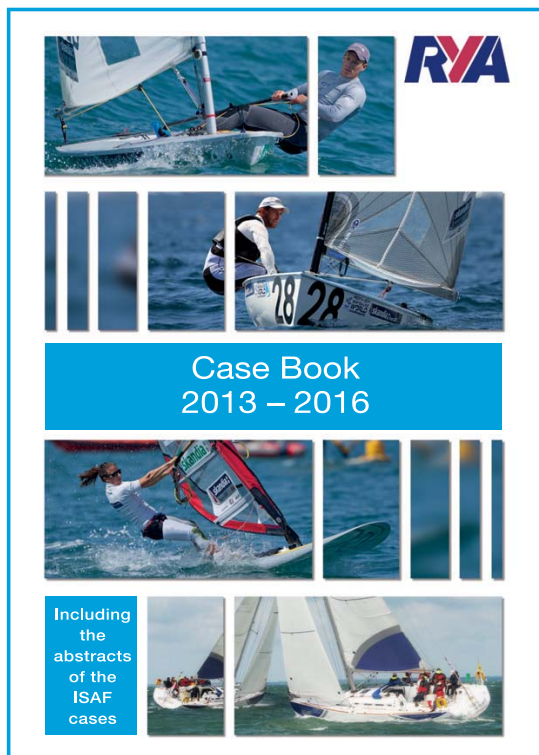
- L.2 Comments made on social media by a competitor, if they could be reasonably associated with the event or the sport by an outsider, fall within the scope of rule 69. It is more likely the sport will have been brought into disrepute by this method, as comments made on social media quickly circulate beyond the control of the author.

- L.3 If using comments made on social media as evidence, it is important to take a copy of them at the time you see them. You should make a note of when, where and how you accessed them. The competitor may remove them before the start of a hearing and they may be inaccessible again.

Appendix M: Non-Competitors

M The rules concerning non-competitors.

- M.1 There is a common misperception that non-competitors (such as coaches, parents, spectators) can be disciplined under rule 69. This is very rarely the case and this appendix is a short explanation of why.
- M.2 The Racing Rules of Sailing are technically a contract between all competitors and the organising authority. It is from the consent of the competitors, found through their acceptance of this "RRS contract", that the protest committee and the RYA derive their jurisdiction to discipline them. There is no special standalone legal authority granted to the RYA or race officials to exercise jurisdiction over competitors: it must derive from the RRS.
- M.3 It follows that, as only competitors enter racing and agree to be bound by the RRS, it is only they that can be disciplined under rule 69. Coaches, spectators, parents, etc. do not enter racing themselves and so have not agreed to be governed by rule 69.
- M.4 There is sometimes an argument that parents or coaches can be bound by rule 69 because they sign various documents when registering or through entering their competitors in racing. The RYA's view is that it is legally unsafe to use this approach.
- M.5 Disciplinary action through club or class association rules is still available where appropriate.



RYA Racing Department

Under the umbrella of its Racing Charter, the RYA produces a range of guidance booklets and notes on the Racing Rules of Sailing and the organisation of racing.

The documents shown here will be available early 2013 and will be updated and additional notes will be published as required. The guidance offered is the opinion of experts and is not a binding interpretation of the rules, nor will it be appropriate for all racing.

The latest versions of these documents can be obtained from the RYA website at www.rya.org.uk/racingrules.

