

RULES DISPUTES

INTRODUCTION

If an incident on the water in fleet racing is not resolved by a boat taking a penalty (one turn for touching a mark, two turns for breaking a rule of Part 2 of the Racing Rules of Sailing, retiring in other cases), then the normal outcomes are:

- A protest hearing which may result in a disqualification: this appears to have become less common;
- A boat retires after finishing: this can happen;
- Nothing happens, because there is no protest and no retirement: this has become too frequent.

The RYA understands a reluctance to take matters to protest hearings, but no one in the sport should condone disregard of the rules. The RYA therefore recommends that clubs should consider adopting:

- (a) A Post-Race Penalty, which is less severe than disqualification, and is available after racing for many infringements; and
- (b) An Advisory Hearing and/or RYA Arbitration, two alternative ways of resolving disputes.

POST-RACE PENALTY (previously known as Exoneration Penalty)

- The Post-Race Penalty is available for breaches of the rules of Part 2 (rules 10-24) and for touching a mark (rule 31) if a turns or scoring penalty under rule 44 could have been taken for the infringement at the time of the incident.
- The penalty is a 30% scoring penalty calculated as stated in rule 44.3(c), except that the minimum penalty is three places and a boat shall not be scored worse than the number of boats that came to the starting area¹. However, if the boat caused injury or serious damage or gained a significant advantage by her breach, her penalty remains retirement. The penalty may be varied in the sailing instructions according to the level of the event or number of competitors. For example, a 40% penalty with a minimum penalty of four places may be more appropriate at an Open Meeting or a National Championship.
- It may be accepted after finishing and before the start of any protest hearing.
- When it is accepted, a protest committee cannot penalise that boat further over the same incident, except under rules 44.1(b), 2 or 69.
- Once accepted, it cannot be withdrawn even if a protest committee later decides no rule was broken.

¹ This is the case unless rule 44.3, Scoring Penalty (at the time of an incident), applies. In which case, 'the number of boats that came to the starting area' should be replaced with 'the score for Did Not Finish' to ensure that a Post-Race Penalty is not less than a Scoring Penalty.

If 'the number of boats that came to the starting area' is complicated, it can be replaced by 'the score for Did Not Finish', although this will mean a Post-Race Penalty will not be less severe than disqualification for some boats.

PUTTING THE POST-RACE PENALTY INTO EFFECT

Adopting the Post-Race Penalty does not need either the Advisory Hearing or RYA Arbitration to be adopted, but the Post-Race Penalty is an essential part of RYA Arbitration. It may be decided that making the Post-Race Penalty available for a boat to accept will be sufficient. However, the use of one or both of the two alternative methods for resolving disputes is recommended, and can be stated to apply in the notice of race and in the sailing instructions. They are:

1. AN ADVISORY HEARING

Its purpose is to discuss incidents with an adviser and resolve them promptly in an informal but positive way, so that competitors understand the rules better. It is available only where there is no injury, serious damage, related protest or RYA Arbitration.

When an Advisory Hearing is requested, and if all parties agree to this procedure, an adviser will hear quickly what the parties have to say, decide whether the issues are clear enough without further evidence and, if so, say whether any boat broke a rule and, if so, which and why.

Redress is not available, but a race committee may agree to correct a mistake if it comes to light.

2. RYA ARBITRATION

Its purpose is to resolve protests more simply and quickly; it is not suitable for incidents that resulted in injury or serious damage. In 2017, World Sailing introduced into the Racing Rules of Sailing a new appendix (Appendix T) covering arbitration; this can be found at www.sailing.org/documents/racingrules/index. However, the RYA recommends a somewhat more detailed arbitration process, called RYA Arbitration, which is described below.

When a protest form is lodged, a boat may request RYA Arbitration, or the protest committee may suggest it. If the boats and a member of the protest committee or race committee agree that RYA Arbitration is suitable, one or more arbitrators (who may also be members of the protest committee) hear the evidence of the parties and give an opinion on whether any boat broke a rule and, if so, which and why. The arbitrator will then invite each boat that appears to have broken a rule to accept a Post-Race Penalty. If all such boats accept a penalty, or the arbitrator's opinion is that that no boat broke a rule, the arbitrator will invite the protestor to withdraw the protest. When the protest is withdrawn, this will normally conclude the matter. A withdrawal of a protest following RYA Arbitration cannot subsequently be withdrawn. When a boat declines to take an offered penalty, or when the protest is not withdrawn, a protest hearing will follow. However, a boat that takes a penalty shall not be penalised further by the protest committee with respect to the same incident unless she caused injury or serious damage or gained a significant advantage.

The arbitrator may instead decide that the matter should be heard as a full protest. However, a boat may still accept a Post-Race Penalty before the hearing, thus avoiding the possibility of disqualification in most cases.

Because of the often complex nature of redress requests, as well as potential implications of their outcome for other boats and also appeal procedures, requests for redress cannot be heard by RYA Arbitration and must instead be heard by a protest committee. In apparently straightforward situations, it may be appropriate to form a protest committee with fewer than three members.

SUMMARY

	ADVISORY HEARING	RYA ARBITRATION	PROTEST HEARING
Initiation	Oral request	Protest form	Protest form
Validity of protest notification	Not required	Required	Required
Time limit for a boat to ask for a hearing	None	Normal protest time limit; arbitration request may be made on the protest form related to the incident	Normal protest time limit
If one boat does not agree to participate -	- the hearing will not take place	- the arbitration will not take place, and it will be heard as a normal protest	- the protest committee will normally proceed if one party decides not to attend
Penalty	A boat may voluntarily accept a Post-Race Penalty if it is available for the rule broken, but she is not required to do so	Arbitrator may invite (but not require) a boat to accept a Post-Race Penalty if it is available for the infringement, or, if it is not, to retire (RET)	Normal disqualification or other applicable penalty
If there was injury, serious damage or a boat gained a significant advantage	Post-Race Penalty not available, the boat should retire	Post-Race Penalty not available, the boat should retire	Disqualification for not retiring
Redress	Cannot be given, but a race committee may correct an error that is identified	Cannot be given, but a race committee may correct an error that is identified	Full range of redress options
Further options	None	Any party may seek to have the decision reviewed by calling for a full hearing of the protest or request by a protest committee ²	The decision may be appealed
Paperwork	None	Completed protest form	Completed protest form

² However, when a Post-Race Penalty is accepted

- (a) neither the boat nor a protest committee may then revoke or remove the penalty.
- (b) the boat shall not be penalised further in a protest hearing when the protest committee decides that the penalty was appropriate to the facts found and the applicable rules.

ADVISORY HEARING PROCEDURE

1. Competitor asks the race office for an Advisory Hearing and informs the other competitor(s).
2. The race office logs the request and informs the adviser, who checks that all competitors concerned are willing to attend and do not intend to lodge a protest or ask for redress. A hearing is convened.
3. Each competitor takes a few minutes to say what happened. Normally, only the adviser may call witnesses.
4. The adviser asks questions and announces the outcome. If the facts are clear, the adviser uses the rule book to explain the rules that apply and whether a rule was broken. If a rule was broken, and a boat accepts this, she should consider accepting a Post-Race Penalty if it is available for the rule considered broken, or otherwise consider retiring. She is not obliged to do this.
5. If the facts are not clear, the adviser will try to advise how the rules would apply to possible variations of the facts.
6. This procedure can be used instead of a request for redress to seek correction of a boat's score, in which case a race committee representative will attend. The race committee is not obliged to accept the decision of the adviser.

RYA ARBITRATION PROCEDURE

1. A boat will lodge a protest form in the normal way, and within the normal time limit
2. When RYA Arbitration is provided for in the notice of race and sailing instructions, its use may be initiated by any party (the protest form may provide for a protestor to ask for this) or by a member of the protest committee or race committee. The protest committee appoints one or more arbitrators, who will first establish that there was no injury or serious damage and/or that a boat did not gain a significant advantage. If they are satisfied, and if all parties agree, an arbitration hearing will be called, to take place as soon as possible in a quiet place, but with observers permitted to attend.
3. If the arbitrator judges the issue too complex, or if a party does not agree to arbitration, the issue will be heard as a normal protest.
4. If a party is not present, and therefore is not able to accept a Post-Race Penalty, it is recommended that the matter is heard by a protest committee. If RYA Arbitration was suitable, it may be equally suitable for the arbitrator to act as a one-person protest committee.
5. The arbitrator follows the same procedure as for a protest hearing (see Appendix M in the Racing Rules of Sailing), starting with establishing whether the protest was valid. If it is, the parties then briefly state their case. They may question each other, and the arbitrator will question them.
6. The arbitrator may decide at any time during the hearing that the issue would in fact better be heard by a full protest committee, and may suspend the arbitration. Any boat may accept a Post-Race Penalty before the start of a full protest hearing (or retire if she caused injury, serious damage or, despite taking a penalty, gained a significant advantage – rule 44.1). However, the arbitrator may instead decide that hearing other witness evidence immediately will enable an immediate and clear solution to be found. Only the arbitrator may call witnesses.
7. The arbitrator hears and summarises the evidence of the parties, and gives his opinion on whether any boat broke a rule and, if so, which and why. A boat that appears to have

broken a rule is invited to accept a Post-Race Penalty (or retire if she caused injury, serious damage or gained a significant advantage).

8. When all boats that appear to have broken a rule accept a Post-Race Penalty (or decide to retire), or if the arbitrator's opinion is that no rule was broken, the protestor is invited and allowed to withdraw the protest.
9. No party is obliged to accept a Post-Race Penalty or retire, and no party is obliged to accept that another party did not break a rule. In either case, the party is entitled to have the matter heard as a normal protest with a full hearing.
10. The arbitrator completes the protest form, detailing any penalties accepted and whether the protest is withdrawn and returns it to the race office. The protest form sections on facts found, conclusions and decision should be left blank. If a full protest hearing is to follow, no new protest form from the party is needed - the protest committee will attach a fresh second page to the protest form for its own hearing.
11. If, for any reason, the issue is not or cannot be resolved to the parties' satisfaction by RYA Arbitration and it then proceeds to a protest hearing, any party may accept a Post-Race Penalty at any time before the protest hearing starts (or retire if she caused injury, serious damage or, despite taking a penalty, gained a significant advantage – rule 44.1). A Post-Race Penalty, once accepted, cannot be withdrawn or removed, even if a protest committee later decides that a boat that accepted a Post-Race Penalty did not in fact break a rule.
12. When a boat accepts a Post-Race Penalty at RYA Arbitration or at any time before the start of a protest hearing, she will not be penalized further at the protest hearing if the protest committee decides that the penalty she has already accepted was appropriate to the facts it finds.
13. When RYA Arbitration proceeds to a full protest hearing, there is no objection in principle to the arbitrator being a member of the protest committee, but a protest committee may decide not to have the arbitrator as a member.

RECOMMENDED NOTICE OF RACE & SAILING INSTRUCTIONS

To put these procedures into effect – they may be modified to suit particular requirements of organizing authorities.

ADD TO THE NOTICE OF RACE:

The Post-Race Penalty and the Advisory Hearing and RYA Arbitration of the RYA Rules Disputes procedures shall apply (for information on the procedures, go to www.rya.org.uk/go/rulesdisputes). The outcome of an RYA Arbitration can be referred to a protest committee, but an arbitration cannot be reopened or appealed.

AND EITHER:

Post these procedures on the Official Notice Board, and add as applicable to the Sailing Instructions:

The Post-Race Penalty and the Advisory Hearing and RYA Arbitration procedures of the RYA Rules Disputes procedures shall apply. The outcome of an RYA Arbitration can be referred to a protest committee, but an arbitration cannot be reopened or appealed. See the Official Notice Board for details.

OR

Add as applicable to the Sailing Instructions (choose a different percentage if desired):

X Post-Race Penalty

X.1 A boat that may have broken a rule of Part 2 of the Racing Rules of Sailing or rule 31 may, after finishing the race concerned and before the start of any related protest hearing, notify the race committee that she accepts a Post-Race Penalty – a 30% scoring penalty (SCP) calculated as stated in rule 44.3(c), except that the minimum penalty is three places and she shall not be scored worse than the number of boats that came to the starting area³. However, if the boat caused injury or serious damage or, despite taking a penalty, gained a significant advantage in the race or series by her breach her penalty shall be to retire.

X.2 When a Post-Race Penalty is accepted:

(a) Neither the boat nor a protest committee may then revoke or remove the penalty.

(b) The boat shall not be penalized further in a protest hearing when the protest committee decides that it was appropriate to the facts found and the applicable rules.

Y Advisory Hearing

When there is an incident that will not result in the lodging of a protest or a request for redress, a boat may request an advisory hearing and notify any boat involved in the incident. An adviser will then call a hearing to learn what may have happened and, provided all parties are willing to attend, will state whether any rule appears to have been broken, and by which boat. A boat may as a result notify the race office that she accepts a Post-Race Penalty when it applies to the incident, or choose to retire, but is not required to do so.

Z RYA Arbitration

Z.1 When a protest is lodged, a boat may at the same time request RYA Arbitration, or the protest committee or race committee may offer it.

Z.2 If the parties and a member of the protest or race committee agree that RYA Arbitration is suitable, an arbitrator (who may be that member of the protest committee) will call an Arbitration Hearing. When it is the arbitrator's opinion that a boat that is a party to the arbitration hearing has broken a rule for which the Post-Race Penalty is available, the party will be invited to accept that penalty and, if accepted, the protesting boat will be allowed to withdraw the protest, changing rule 63.1.

Z.3 When there is not agreement to use RYA Arbitration or when, after RYA Arbitration, a protest is not withdrawn or the Post-Race Penalty is not applicable to the facts, there will be a normal protest hearing at which the arbitrator may be a member of the protest committee. Rules 66 and 70 (reopening and appeal, respectively) do not apply to an arbitration since this is not a protest committee decision or procedure. A boat may still accept a Post-Race Penalty at any time before the start of a protest hearing and receive its protection from further penalization. She may also retire.

³ This is the case unless rule 44.3, Scoring Penalty (at the time of an incident), applies. In which case, 'the number of boats that came to the starting area' should be replaced with 'the score for Did Not Finish' to ensure that a Post-Race Penalty is not less than a Scoring Penalty.