
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;
- 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 Meeting and/or RYA Arbitration, two alternative ways of resolving disputes.

POST-RACE PENALTY (previously known as Exoneration Penalty)

- The Post-Race Penalty is available when a boat may have broken a rule of Part 2 or touched a mark (rule 31) while racing.
- The Post-Race Penalty is not an alternative to a turn or turns under rule 44.1 or a Scoring Penalty under rule 44.3. It is available to boats only when, at the time of the incident, they were unaware that they had broken a rule or disputed that they had done so. A boat that knowingly breaks a rule and does not promptly take an appropriate penalty breaks a fundamental principle of sportsmanship and breaks rule 2.
- The Post-Race 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 its breach, retirement is the only available penalty.
- The Post-Race 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.

¹ This is the case unless rule 44.3, Scoring Penalty, 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.

- A Post Race-Penalty may be accepted after finishing and before the start of any protest hearing.
- When a Post-Race Penalty is accepted, a protest committee cannot penalise that boat further over the same incident, except under rules 2 or 69 or when rule 44.1(b) applies.
- Once accepted, a Post-Race Penalty cannot be withdrawn even if a protest committee later decides no rule was broken.

PUTTING THE POST-RACE PENALTY INTO EFFECT

Adopting the Post-Race Penalty does not require either the Advisory Meeting 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 also recommended, and can be stated to apply in the notice of race or sailing instructions. They are:

1. AN ADVISORY MEETING

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, or related protest or RYA Arbitration.

When an Advisory Meeting is requested, an adviser will hear quickly what the parties have to say, decide whether the issues are clear enough without further evidence and, if so, give an opinion whether any boat may have broken a rule and, if so, which and why.

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

2. RYA ARBITRATION

The purpose of RYA Arbitration is to resolve protests more simply and quickly.

It may be applied when the Post-Race Penalty is available, i.e. when a boat may have broken a rule of Part 2 or touched a mark (rule 31) while racing.

It is not available for incidents that resulted in injury, serious damage or where a significant advantage may have been gained.

World Sailing have introduced into the Racing Rules of Sailing an 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 is lodged, a boat may request RYA Arbitration, or the race or protest committee may suggest it.

If the boats and the protest committee agree that RYA Arbitration is appropriate, one or more arbitrators (who may also be members of the protest committee) will give an opinion on the validity of the protest and, if deemed valid, will hear the evidence of the parties and give an opinion on whether any boat may have broken 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 the penalty, or the arbitrator's opinion is 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 protest withdrawn following RYA Arbitration cannot subsequently be heard by a protest committee.

When a boat declines to take an offered penalty, or when the protest is not withdrawn, a protest hearing will follow. In apparently straightforward situations, it may be appropriate to form a protest committee with fewer than three members. However, a boat that takes a Post-Race Penalty shall not be penalised further by the protest committee with respect to the same incident unless the protest committee decides the boat caused injury, serious damage or gained a significant advantage.

The arbitrator may instead decide that the matter should be heard by the protest committee. However, a boat may still accept a Post-Race Penalty before the protest 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 the subject of RYA Arbitration and must be heard by a protest committee.

If, during the arbitration, the arbitrator believes a boat could be entitled to redress as a result of the incident, or that a boat may have broken rule 2, the case should be referred to the protest committee.

SUMMARY

	ADVISORY MEETING	RYA ARBITRATION	PROTEST HEARING
Initiation	Oral request	Written Protest	Written Protest
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 with the written protest related to the incident	Normal protest time limit
If one boat does not agree to participate -	- the meeting will not take place	- the arbitration will not take place, the case will be heard by a protest committee	- 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 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)	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 decision form	Completed decision form

ADVISORY MEETING PROCEDURE

1. Competitor asks the race office for an Advisory Meeting and informs the other competitor(s).
2. The race office or protest committee logs the request and informs the adviser, who checks that there is no intention to lodge a protest or ask for redress. A meeting is convened.
3. Each competitor takes a few minutes to say what they think happened. Normally, only the adviser may call witnesses.
4. The adviser asks questions and gives their opinion.

If the facts are clear, the adviser uses the rule book to explain the rules that apply and whether a rule may have been broken. If a boat agrees that it broke a rule, the boat should consider accepting a Post-Race Penalty if it is available for the rule considered broken, or otherwise consider retiring. The boat is not obliged to do this.

If the facts are not clear, the adviser will try to advise how the rules would apply to possible variations of the facts.

RYA ARBITRATION PROCEDURE

1. A boat will lodge a protest in the normal way, and within the normal time limit
2. When RYA Arbitration is provided for in the notice of race or sailing instructions, its use may be requested by any party or the protest committee or race committee.
3. The protest committee appoints one or more arbitrators, who will first consider whether there was injury or serious damage and/or that a boat gained a significant advantage from the incident. If they are satisfied that none of these occurred, and if all parties agree, an arbitration will be called, to take place as soon as possible in a quiet place, and without observers permitted to attend (who might otherwise be called as witnesses to a subsequent protest committee hearing).
4. If the arbitrator judges the issue too complex, or if a party does not agree to arbitration, the protest will be heard by a protest committee.

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.

5. If a party is not present, and therefore is not able to accept a Post-Race Penalty, the protest must be 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.

6. The arbitrator follows the same procedure as for a protest hearing (see Appendix M in the Racing Rules of Sailing), starting by considering the validity of the protest.

If the arbitrator considers the protest is valid, the parties are asked to briefly state their case. They may question each other and the arbitrator will question them.

7. The arbitrator may decide at any time during the arbitration that the issue should be heard by a protest committee, and terminate the arbitration.

Any boat may accept a Post-Race Penalty before the start of the protest hearing (or retire if it caused injury, serious damage or, despite taking a penalty, gained a significant advantage – rule 44.1).

However, the arbitrator may instead decide that hearing witness evidence immediately will enable an immediate and clear opinion to be found. Only the arbitrator may call witnesses.

8. The arbitrator summarises the evidence of the parties, and gives an opinion on whether any boat broke a rule and, if so, which and why. Each boat that may have broken a rule is invited to accept a Post-Race Penalty (or retire if the boat may have caused injury, serious damage or gained a significant advantage).

9. When all boats that may have broken a rule accept a Post-Race Penalty (or decide to retire), or if the arbitrator's opinion is that the protest is invalid or no rule was broken, the protestor is invited and allowed to withdraw the protest.

10. 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 protest heard by a protest committee.

11. The arbitrator completes the decision form, detailing any penalties accepted and whether the protest is withdrawn and returns it to the race office. The decision form sections on facts found, conclusions and decision must be left blank.

If a full protest hearing is to follow, no new protest from the party is needed - the protest committee will attach a new decision form to the written protest for its own hearing.

12. If, for any reason, the protest 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 they 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.

13. When a boat accepts a Post-Race Penalty at RYA Arbitration or at any time before the start of a protest hearing, the boat will not be penalised further at the protest hearing if the protest committee decides that the penalty the boat has already accepted was appropriate to the facts it finds.

14. When RYA Arbitration proceeds to a 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 organising authorities.

Add to the Notice of Race:

The Post-Race Penalty, Advisory Meeting 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, Advisory Meeting 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 it 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 the boat 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 its breach, its 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 penalised further in a protest hearing when the protest committee decides that it was appropriate to the facts found and the applicable rules.

Y. Advisory Meeting

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 meeting and notify any boat involved in the incident.

An adviser will then call a meeting to learn what may have happened and 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 it accepts a Post-Race Penalty when it applies to the incident, or choose to retire, but is not required to do so.

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.

Z. RYA Arbitration

Z.1 After a protest is lodged, a boat may request RYA Arbitration, or the protest committee or race committee may offer it.

Z.2 If the parties and the protest committee agree that RYA Arbitration is suitable, an arbitrator (who may be a member of the protest committee) will call an arbitration.

When it is the arbitrator's opinion that a boat that is a party to the arbitration has broken a rule for which the Post-Race Penalty is available, the party will be invited to accept that penalty and, if all such penalties are accepted, the protesting boat will be allowed to withdraw the protest, changing rule 63.1.

Z.3 When any of the following conditions apply,

1. a party to the protest does not agree to RYA Arbitration,
2. the arbitrator's opinion is that the Post-Race Penalty is not applicable to the incident
3. a boat may be entitled to redress
4. a boat does not accept an offered Post-Race penalty,
5. the protest is not withdrawn,

there will be a protest committee hearing.

The arbitrator may be a member of the protest committee.

Any boat is entitled to accept a Post-Race Penalty at any time before the start of the protest committee hearing and receive protection from further penalisation. The boat may also retire.

Z.4 Rules 66 and 70 (reopening and appeal, respectively) do not apply to an RYA Arbitration since this is not a protest committee decision or procedure.

RYA ARBITRATION PROCESS

