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Protest Committee Recommendations



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

1. Preliminaries (May be performed by Race Officer)

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

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

It may also be advisable to notify any witness cited in the protest form, but it is the party calling the witness who is responsible for securing the witness's attendance, and should not be led to expect that someone else will arrange this. The protest committee cannot compel anyone, party or witness, to attend.

If a request for redress alleges that a competitor has been wrongly scored, try to get the requester to raise the matter directly with the Race Committee to seek correction before any hearing, which will then be necessary only if the complaint cannot be resolved.

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

Unless the sailing instructions say so, there is no obligation for a protestor or requestor to use a protest form, anything written will suffice, and it need not be signed. Attach the document to a blank protest form and proceed normally. For protests, Rule 62.1 allows the initial document to be valid even if considerable deficient in information, which can be added later. The same principal should be applied to requests for redress. For instance, a request for redress could be a letter or note from a competitor. It may indeed not be clear from what is lodged that redress is being requested, as few of the particulars required for a redress claim in rule E6.6 (rule 62.1) may be set out - but it must 'identify the reason' for making the protest (rule 62.2). Similarly there may be a claim written on a protest form that, if upheld, might result in redress being given, in which case it should be

treated as a request for redress even if the competitor has not ticked the 'request redress' box on the protest form.

If there is a complaint in writing about race management that does not use a protest form, does not allege directly or indirectly that the competitor's finishing position has been affected, and does not seek any particular remedy, refer the matter first to the race Committee. But, if in doubt, treat a complaint as a possible request for redress, and call a hearing. The competitor will then be able to make their case, and the protest committee will decide whether each necessary requirement of Rule E 6.6 (Rule 62.1) has been met. The request then may fall at an early hurdle, for instance by the competitor not being able to show a worsened finishing position despite (say) a clear race committee mistake, but that is a judgement that can be made only in a hearing.

2. Before the Hearing

- a. Make sure that:
 - Select three skippers as the Protest Committee MYA SSI 7.02
 - Each party has a copy of or the opportunity to read the protest or request for redress and has had a reasonable time to prepare for the hearing
 - No member of the protest committee in an *interested party*. Ask the parties whether they object to any member. When redress is requested under Rule E 6.6 (Rule 62.1a), a member of the race committee should not be a member of the protest committee
 - Only the competitor controlling the boat is present unless an interpreter is needed.
 - All competitors and people involved are present. If they are not, however, the committee may proceed under rule 63.3b
 - In a measurement protest obtain the current class rules and identify the authority for interpreting them (rule 64.3b)
- b. Determine if any member of the protest committee saw the incident. If so, require each of them to state that fact in the presence of the parties (rule 63.6)

When it is possible that a party may not know a member of the protest committee, introduce and name the protest committee members when asking for objections.

Always check whether a member of the protest committee saw the incident.

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

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

3. The Hearing

- a. Check the validity of the protest or request for redress.
 - Are the contents adequate E6 (rule 61.2) or E 6.6 (rule 62)
 - Was it delivered in time? If not, is there good reason to extend the time limit E 6.5
 - When required, was the protestor involved in or a witness to the incident E 6.1 and E6.2
 - When necessary, was 'Protest' hailed and, if required, further hails E 6.3
 - When the hail was not necessary was the protestee informed E 6.3 and E 6.4?
 - Decide whether the protest or request for redress is valid.
 - Once the validity of the protest or request for redress has been determined, do not let the subject be introduced again, unless truly new evidence is available.

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

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

A request for redress need not make out in writing every element of the start of E 6.6 (Rule 62.1), and so a hearing should continue even if the form does not make clear the extent of places or points alleged to be lost, or if there is no assertion that the requester was not at fault. These are matters to be established during the hearing.

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

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

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

b. Take the evidence Rule E 6.8 (Rule 63.6)

- Ask the protestor and then the protestee to tell their stories. Then allow them to question one another. In a redress matter, ask the party to state the request.
- Invite questions from protest committee members
- Make sure you know what facts each party is alleging before calling any witness. Their stories may be different.
- Allow all witnesses to give evidence. It is the party who normally decides which witnesses to call, although the protest committee may also call witnesses E 6.8 (Rule 63.6). The question asked by a party 'Would you like to hear N?' is best answered by 'It is your choice.'
- Call each party's witness (and the protest committee's if any) one by one. Limit parties to questioning the witness(es) (they may wander into general statements). Invite the protestee to question the protestor's witness first (and vice versa). This prevents the protestor from leading their witness from the beginning.
- Allow members of the protest committee who saw the incident to give evidence E 6.8 (Rule 63.6) but only while the parties are present. Members who give evidence may be questioned, should take care to relate all they know about the incident that could affect the decision, and may remain on the protest committee E6.7 (Rule 63.3a).
- Try to prevent leading questions or hearsay evidence, but if that is impossible discount the evidence so obtained.
- Accept written evidence from a witness who is not available to be questioned only if all parties agree. In doing so, they forego their rights to question that witness E6.8 (Rule 63.6).
- Ask one member of the committee to note down evidence, particularly times, distances, speeds, etc.
- Invite first the protestor and then the protestee to make final statement of their case, particularly on any application or interpretation of the rules.

Models are particularly useful for parties and witnesses to show the changes in positions of the boats. Ideally, have enough so that the models showing the positions at the beginning of the incident can be left in place, and further models can be added and also left in place on the table for each stage of the incident. This will more clearly show up any

inconsistencies. With sufficient models these 'diagrams' from all parties can be set out side by side, so that the differences in the evidence can be highlighted. Otherwise, if it is necessary to remove one 'diagram' for another to be displayed, use a mobile phone's camera to record it. Suitable models are available from the RYA.

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

c. Find the Facts E 6.8 (Rule 63.6)

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

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

It may help to imagine that you are describing what happened to someone who was not present - as you will be if the protest goes to appeal. Simple statements made as 'bullet points' are recommended, but if time permits a diagram can also be useful - and may be necessary on appeal. It can save time to use models to create a protest committee diagram. It too can be photographed in case it is needed.

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

d. Decide the protest or request for redress E 7 and E 6.9 (Rule 64)

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

PROTESTS

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

FACTS FOUND

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

RULES AND CONCLUSIONS

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

DECISION

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

Note the following from this example.

- First, it is not necessary for there to be contact in order for a competitor to be found not to have kept clear, as the definition of that term shows. Contact is usually evidence that a competitor has already broken a rule. (For instance, if a boat clear astern sails into the transom of one clear ahead, they will have broken rule 12 **before** the collision, at the point the boat ahead would have needed to take avoiding action). Second, it is quite possible, as here, that both competitors may have broken a rule, in which case both are to be penalised. A competitor is to be exonerated under rule 64.1c only when they were otherwise blameless, and was compelled to break a rule by the other competitor's breaking of a rule. In this case, competitor A was required to keep clear and had the room to do so. The fact that competitor B broke rule 17 does not exonerate A's breach of rule 11.I*
- If there is contact, facts and conclusions relevant to rule 14 must be recorded. When a give-way competitor has broken a right-of-way rule (rules 10 - 13), they may have broken rule 14 as well if there was contact, but their disqualification will be based primarily on the right-of-way rule concerned.*
- If there was damage, then facts and conclusions relevant to rule 14 must be arrived at concerning the competitor with right-of-way under rules 10 - 13 or a competitor (right-of-way or give-way) entitled to room under rules 15, 16, 18, or 19. For a right-of-way competitor or one entitled to room to be penalised under rule 14, there must have been contact that caused damage, being contact that the right-of-way or room-entitled competitor could have avoided. This too is a situation where both competitors in a protest could be disqualified, regardless of which originally protested which - the give-way competitor for not keeping clear, and the other for not avoiding contact. Note that a right-of-way competitor or one entitled to room or mark-room is not required to act to avoid contact until it is **clear** that the other competitor is not keeping clear or giving room.*
- Disqualification is the normal outcome when a protest committee, considering a protest, decides that a competitor has broken a rule, including a class rule or sailing instruction (which are themselves rules).*
- In a protest, the decision must be confined to the parties and to the incident stated on the protest form. It is quite possible that the protest against the protestee will be dismissed, but the protestor will be found to have broken a rule and is to be disqualified.*

- *If a protest is found to be invalid, but there is an allegation or possibility of serious damage, rule 60.3a (1) permits the protest committee to protest any competitor involved. When the new protestee is the competitor already protested in the invalid protest, a fresh protest is nevertheless required, with a fresh protest form completed by the protest committee. A fresh hearing must be called (which may however be as near immediately as possible, if the protestee does not ask for further time.) The first matter to be ascertained is whether there was indeed serious damage. If not, close the hearing.*
- *If a party to a protest has also requested redress (for instance, if claiming to have been physically damaged by the other competitor), then the protest decision and redress decision can be stated on the same form. Decide the protest first, add any further facts relevant to redress. That will now be the basis for deciding whether redress is due, and, if so, what redress.*
- *It may be that a competitor that is a party in a protest hearing has not requested redress, but redress is clearly in order under a clause of rule 62.1, it would be appropriate to say that the protest hearing will become a redress hearing in favour of the competitor, without needing to make a fresh start. Use the same protest form to record any additional relevant facts and state the redress given.*

REQUESTS FOR REDRESS

In order to qualify for redress, a competitor's finishing position in a race or series must have been made significantly worse by one of the causes identified in MYA SSI 2.13 E 6.6 (Rule 62.1) and they must not have been at fault. Facts need to be found to enable these to be drawn as conclusions.

Common Redress Situations:

The race committee disqualifies a competitor without a hearing (or scores them DNF) when it believes that they did not sail the course. If the boat actually complies with the definition 'Finish' by crossing the finishing line from its course side, she is entitled to a finishing place, which can only be taken away from her as a result of a protest (Rule A5). They are to be reinstated.

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

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

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

- *A competitor claims they were wrongly identified OCS: give the benefit of any doubt to the race committee, whose race officer will have been best placed to identify them.*

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

e. Inform the parties (rule 65)

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

Remember to give details of your decisions to the scorers! Post a summary of protest committee decisions on the official notice board.

4. REOPENING A HEARING (rule 66)

- a. When a party, within the time limit, has asked for a hearing to be reopened, hear the party making the request, look at any video, etc. and decide whether there is any material new evidence that might lead you to change your decision. Decide whether your interpretation of the rules may have been wrong; be open-minded as to whether you have made a mistake. If none of these applies refuse to reopen; otherwise schedule a hearing.
- b. Evidence is 'new'
 - If it was reasonably possible for the party asking for the reopening to have discovered the evidence before the original hearing
 - If the protest committee is satisfied that before the original hearing the evidence was diligently but unsuccessfully sought by the party asking for the reopening, or
 - If the protest committee learns from any source that the evidence was not available to the parties at the time of the original hearing.

5. GROSS MISCONDUCT (rule 69)

- a. An action under this rule is not a protest, but the protest committee gives its allegations in writing to the competitor before the hearing. The hearing is conducted under the same rules as other hearings but the protest committee must have at least three members (Rule 69.2(b)). Use the greatest care to protect the competitor's rights.
- b. A competitor cannot protest under rule 69, but the protest form of a competitor who tries to do so may be accepted as a report to the protest committee which can then decide whether or not to call a hearing.
- c. When it is desirable to call a hearing under rule 69 as a result of a Part 2 incident, it is important to hear any competitor vs competitor protest in the normal way, deciding which competitor, if any, broke which rule, before proceeding against the competitor under this rule.
- d. The protest committee may warn the competitor (rule 69.2 (c)(1)), in which case no report is made (rule 69.2(d)). When a penalty is imposed and report is made as required by rule 69.2(d) or 69.2(f), it may be helpful to recommend to whether or not further action should be taken.

See separate guidance for race officials on Misconduct on the RYA website at www.rya.org.uk/racing rules.

6. APPEALS (rule 70 and Appendix R)

When decisions can be appealed.

- Retain the papers relevant to the hearing so that the information can easily be used for an appeal. Is there a diagram endorsed or prepared by the protest committee? Are the facts found sufficient? (Example: was there an overlap? Yes or no. 'Perhaps' is not a fact found). Are the names of the protest committee members and other important information on the form?
- Comments by the protest committee on any appeal should enable the appeals committee to picture the whole incident clearly; the appeals committee knows nothing about the situation.

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

7. PHOTOGRAPHIC EVIDENCE

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

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

