

WHEN A PROTEST DOES NOT LEAD TO EXONERATION ON THE WATER - (version 1)

In a perfect world.

In a perfect world protests wouldn't be necessary; an incident would occur between two boats, one of which would acknowledge fault, immediately sail clear and complete a penalty turn.

Welcome to the real world!

It didn't take me very long after first starting radio sailing to realize that race officers (ROs) often seem to actively discourage protests 'off the water' and if any competitor did make such a protest it was likely to be seen by other competitors as someone trying to be 'smart' or just wasting time. Unfortunately we don't live in a perfect world, the Racing Rules of Sailing (RRS) can be complex, and sometimes neither party - quite honestly - believes they are at fault, in which case the only way to resolve the issue is to protest and let a protest committee (PC) decide the outcome. More often than not, because protests are seen as un-sportsmanlike, a waste of time, or just unnecessary, the competitors either attempt to ignore the incident or fail to follow up a legitimate protest when they should.

Part of the sport of sailing.

In sailing we do not have a referee following our every move. We are each given the opportunity to ensure fair play. Protest hearings should not therefore be viewed as a nuisance or an interruption of the day's sailing but as a vital and necessary procedure to resolve disputes in the fairest way possible. Of course for protest hearings to be fair everyone involved in them must behave in a sportsmanlike way, and not resort to telling lies in order to win.

Where to now?

I think the reason some ROs discourage off the water protests is a lack of confidence caused by being unsure how to organize a protest hearing. Similarly many competitors avoid them and sometimes accept penalty turns when they shouldn't, because they are unsure how to present a protest to a PC. I fell into these categories myself, so decided to research the issue in order to try and better understand what is involved and at the same time produce some explanatory notes and a 'check list' to help me. I hope these notes and the associated 'check list' will also be of use to you; when protesting, defending yourself against a protest, or serving on a PC.

WHAT THE RACE OFFICER SHOULD DO.

Pre-race preparation

The Race Officer (RO) should ensure an adequate supply of protest forms and if possible provide a table, model boats and pencil and paper. It is also a good idea to decide in advance who might act on a PC and ask them if they are prepared to do so and at the same time identify a suitable and private place to hold any hearing.

Setting the Scene - The Briefing.

The competitors briefing sets the tone for the day and it is important that the RO makes it clear that the organizers are fully prepared and willing to conduct a protest hearing should this be necessary. Above all the RO should avoid making any remarks which could be interpreted as discouraging protests or protest hearings. Competitors must be able to enjoy their sailing in the knowledge that every effort has been, and will be, made to ensure fair play. The last thing anyone wants is for competitors to go home aggrieved, feeling that they haven't been fairly and properly treated.

At the completion of any heat in which there is an unresolved protest.

The RO should first log the time the race finished - *RRS E5.3 & 61.3* and then confirm with both the protestor and protestee that they wish to take the matter to a hearing. There is a possibility that one of them might decide to retire from the race, in which case the incident probably ends there.

At the completion of any heat in which there is an unresolved contact between a boat and a mark or between two boats.

This is when after a contact neither boat completed a penalty turn nor was there a protest and both parties are trying to ignore the incident. The RO should first log the time the race finished and then confirm with the parties involved if they intend to retire. Again there is a possibility that one of them might decide to take this course of action, and again the incident probably ends there. If neither intends to retire, or if the boat contacting the mark does not retire, the RO should decide whether he will use the Race Committee's right to protest the boat(s) involved - *RRS 60.2 (a)*. Not to do so will probably mean the outcome of the event is unfair to the other competitors.

When serious damage has been caused to one of the boats.

There are two slightly different instances of this happening firstly:-
(a) where the right of way boat causes damage and secondly;
(b) where the give way boat causes damage.

(a), If the right of way boat caused damage she may be disqualified if she did not take avoiding action – see *RRS 14(b)* for full details. The Race Officer may not make this decision but he may invite the boat causing damage to retire. If she does not retire, again in order to ensure a fair outcome for the other competitors, the RO should protest the boat causing damage - *RRS 14 & 60.2 (a)*.

(b) A boat that has made a penalty turn but has caused serious damage or gained a significant advantage in the race or series shall retire - *RRS 44.1 (b)*.

Gaining a significant advantage

Many competitors are not aware that a boat that makes a penalty turn but still gains a significant advantage shall retire. Instead they simply feel hard done by when they lose one or more places on the water as a result of the original transgression. A supplementary protest - which strictly speaking cannot be exonerated on the water but which leads to further penalty turns being done - invariably has the effect of slowing the offending boat until it is behind the one offended against. Whether the RO should act as a policeman in this respect is open to debate. But the opportunity exists for the sailor to seek justice if he/she wishes – *RRS 44.1 (b)*.

When there is a protest.

If the protest is to go ahead a protest form should be issued to the protestor and both parties and the race committee (RC) advised that a PC will be convened and when and where it will be held. Both parties should be invited to call witnesses but warned that the incident shouldn't be discussed with them.

The RO is usually responsible for convening a PC and for finding a suitable and private place to hold the hearing. A table, model boats and pencil and paper should also be provided if at all possible. Ideally every event would have either; a non-participant RYA National Judge, or at least three suitable non participants, not acting on the RC, to sit as the PC. Realistically the small size of many radio sailing events makes either of these scenarios an unlikely possibility in which case the protest committee has to be formed from those persons at the event reasonably qualified and willing to take on the responsibility. It is usually better for the RO not to be part of the PC because firstly; he/she should be concentrating on overseeing the event as a whole, secondly requests for redress often cite the actions of the RO as the grounds for redress and thirdly it may be the Race Committee (i.e. the RO) which is protesting a competitor. In the first and second cases the RO can be called as a witness. Anyone considered to be an 'interested party' is prohibited from sitting on the PC although that person may be called as a witness (*RRS 63.4*). An 'interested party' is defined as, 'A person who may gain or lose as a result of a protest committee's decision, or who has a close personal interest in the decision' This could be a family or commercial link or, more obviously, being a fellow competitor.

The job of the protest committee is to;

1. Decide if the protest is **valid** - *RRS 63.5*
2. Establish the **facts** - *RRS 63.6*
3. Decide which, if any, **penalties** apply; which could be to disqualify one or both boats - *RRS 64.1 (a)*.

N.B. For a protest to be **valid** the call must be made correctly and repeated as specified in *RRS 61.1* and *E5*. Also to be exonerated the penalty turn must be made as soon as possible after the incident; as specified in *RRS 44.2*. This implies that either the protest must be made or a penalty turn completed with the absolute minimum of delay following the incident. The rules require action and do not allow time for any discussion or debate which could degenerate into an unseemly argument which is upsetting for both parties and shows our sport in a very bad light to any members of the public who might be watching. It is beholden upon everyone involved to always act in a sportsmanlike and polite manner.

WHAT THE COMPETITOR SHOULD DO.

When no penalty turn is made after a contact – decision time.

There is a collision between your boat and another; an observer may call the contact. You protest the other boat expecting it to complete a penalty turn but the other boat also calls protest, doesn't do a turn, and it becomes clear that neither of you is going to accept you were at fault. You now need to quickly collect your thoughts and have clear in your mind exactly what happened. If after going through this process you still believe the other boat broke a rule resolve to take the protest off the water to a protest hearing, don't argue or discuss the matter just carry on racing. Should you decide that you were, after all, in the wrong do your penalty turn as soon as possible and that should be the end of the matter - *RRS 44.2*.

After the finish.

As soon as you are ashore - and in any case no later than 5 minutes after the end of the heat - *RRS E5.3* - confirm to the RO that you have a protest outstanding. He/she should already be aware of this anyway - and ask for a protest form to complete. Try to find witnesses; the observer who called the contact would be a good start as would any other boats around you at the time. Don't discuss the incident with the witnesses, just establish that they saw it. The PC will discount their evidence if they conclude that coaching has been given. Don't argue or discuss the matter with the other party and if he/she wants to argue with you, listen to anything they might say only for as long as it takes for you to learn why they think they might have a case. Don't give anything away yourself and above all don't become angry or aggressive, it isn't personal.

Complete the protest form.

Without taking too much time complete the protest form. Finding the correct rule and quoting it to the committee will help your case but is not essential. It is however essential to correctly identify the incident, the other boat(s) involved and when/where on the race course it occurred - *RRS 61.2 (a) & (b)*. Describe the incident (position of boats before the incident, position of boats after the incident). Use text and/or diagrams. It is usually better to do the diagrams first.

Format of the hearing.

You can expect the hearing to be conducted in a private place and any witnesses must be excluded until called. The meeting should also follow a fairly strict format:-

1. The validity of the protest is considered - if invalid the process ends here - if valid it continues as below.
2. Protestor states his/her case
3. Protestee gives his/her view of the incident
4. Allow each to question the other
5. Protest committee ask questions of both
6. The first witness the protestor now calls describes the incident. The protestee questions the witness first then the protestor and PC. The same procedure now follows with any other witnesses. It is important that one witness doesn't hear what the other one says and that they do not discuss the incident with each other.
7. A similar procedure now follows with the protestee's witnesses - the protestor questions the witness first.
8. Any witnesses the committee would like to call are now heard and questioned.
9. The protestor first and then the protestee can now sum-up if they wish to. Both now leave.
10. The committee now consult together in private and reach a decision. They then summon back the protestor and protestee and give the verdict. This should take the form: **facts** found, **decision**, the rule which applies and which, if any, **penalties** are to be imposed.

In the hearing.

At the hearing it is important to remain calm and patient. Don't interrupt and dispute the other party's evidence as it is given, you will get plenty of time to state your case and any such interruptions will only irritate and alienate the committee members. It is important that you present your case clearly, concisely and with confidence. When the facts are not cut and dried or completely clear - as they may not be - how you present your evidence will be crucial to winning or losing the hearing.

After the hearing.

Assuming your protest was valid and a hearing has taken place the protest committee will retire to consider the evidence. They will decide the **facts**, the applicable **rules** and then make the **decision** which may be to **penalize** one or both boats involved. You and the protestee will be called back to hear the decision. It is good practice to offer a handshake at the end of the proceedings.

Re-opening a hearing and making an appeal.

If, after hearing the decision, you believe the PC has made a significant error you are entitled to ask for a reopening of the hearing - *RRS 66 and E5.10*.

Finally an appeal may be made to the RYA where you may dispute a PC's decision or its procedures, but not the facts found - *RRS70*.

There is a check list as an aid to the protest committee to be associated with this document. - END

****Sources of reference; 'Start to Win' by Eric Twiname - published by Adlard Coles Nautical and The Racing Rules of Sailing (RRS). Grateful thanks also to Graham Bantock for his advice and guidance.***