

Version Control

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A club or class association environment is essentially a micro-society and it is therefore not surprising that members may, from time to time, disagree or come into conflict with each other. On occasions, this may escalate and result in a contravention of the organisation's rules, or attempts to bring actions under the Racing Rules of Sailing.

If you have not already done so, you might wish to consider producing a Code of Conduct setting out how you expect members and visitors to behave, for example showing respect and understanding for each other, treating everyone equally within the context of the sport, and conducting themselves in a way that reflects the principles of your organisation. Such a Code could form an Appendix to the Constitution/Byelaws to enable organisations to easily update it as and when necessary. We have produced a Sample Code of Conduct on page 10 of this Guidance which you can tailor to meet your own requirements.

Dealing with tension or disputes

Differences of opinion are human nature, however, within a club/class association involving passionate people such differences can be magnified. Underlying tensions, even if apparently limited to individuals can, if left to fester become harmful to the wider club/class association environment.

In many cases a lack, or perceived lack of communication between different factions, for instance between the committee and wider membership is the root of the tension. Therefore, improving communication channels, running surveys, or asking for feedback at regular intervals may reduce the chances of divisions developing. Encouraging face to face discussions at an early stage is likely to allow tensions to be aired, and hopefully resolved. Considering a matter from the alternative point of view may assist in diffusing tensions.

Regrettably the RYA is unable to become involved in attempts to resolve inter organisation disputes and so clubs/class associations should give consideration in advance to how they may handle such an issue, before it escalates to become a formal disciplinary matter.

The social media element

Social media is a valuable tool for clubs/class associations. It allows messages to be communicated to many recipients quickly and easily, and views and opinions to be shared. However, these positive elements can quickly become negatives when social media is used to vent frustrations.

Comments that were once made in the bar after a race, or passed informally to a committee member, or indeed between members with little impact are now preserved for all to see. Comments may be taken out of context, a written message may be interpreted very differently to a spoken comments. Further, the propensity for others to respond to comments on social media, often without a detailed understanding of the original issue can result in a

situation becoming far more serious, and on occasions may result in not only a potential breach of club/class association policies, but may result in claims of bullying, discrimination, or in some circumstances legal claims.

Clubs/class associations are therefore advised to have a clear policy on the use of [social media](#), including setting out what is and is not appropriate behaviour. You may want to consider how official social media channels are policed, perhaps by appointing a member of the management committee to be responsible for social media content.

An increasing concern is unofficial social media content. Groups, pages or discussions not under the control of the club/class association may be used to promote alternative viewpoints. Unless the content or conduct of the members of such unofficial groups can be proven to give rise to a breach of the relevant websites usage policy or a breach of legal principal, such as bullying or defamation, there is little that can be done to prevent an alternative viewpoint from being expressed on an unofficial channel, however, such content can provide a valuable insight to the views of others and may allow the club/class association to take appropriate action to address the cause of the concern.

Use of the Racing Rules of Sailing

The Racing Rules of Sailing provide a framework under which some disputes may be escalated to the RYA or potentially to World Sailing. However, the RRS must not be seen as a way for general disputes to be escalated and it must be noted that there are two significant limitations to the RRS.

Time

The jurisdiction of a protest committee under rule 69 extends from the time competitors arrive at the event location for the purposes of competing until they depart, however, action may also be taken if a competitor can be readily associated with the event. Therefore misconduct occurring after the end of the event may be brought within rule 69 if a sufficient association to the event is established, however if a sufficient connection cannot be established to the particular event then a rule 69 action is unlikely. Therefore, the rule is not an appropriate tool to address the sort of more general disputes that can occur in the club/class association environment.

Parties

Like any contractual arrangement, the RRS only apply between those who have agreed to be bound by them. Therefore, while the RRS are applicable between those entering a race, they would not cover outside that event, such as the wider club/class association membership. Those seeking to rely on the RRS must therefore ensure the parties have in fact agreed to be subject to the rules, and for more general or long running disputes the club/class association's own disciplinary policy may be the most appropriate tool.

Disciplinary Action

The disciplining of members for breach of the rules is, thankfully, not a common occurrence; however, it pays to know what rights the organisation and the member have in relation to disciplinary offences.

Members may only be suspended or expelled where the organisations rules specifically provide for such action to be taken. Most clubs/class associations' constitutions contain provision laying down a procedure for the expulsion or suspension of members whose conduct is either unworthy of a member or otherwise injurious to the interests of the organisation.

There have been cases in which members subject to disciplinary action have taken successful legal action against their club to secure an order from the court to be re-instated as members. A member that has been suspended or expelled is only likely to succeed in challenging his suspension or expulsion in court if he can show that the committee failed to follow its own rules of procedure, or acted unfairly in failing to afford him an opportunity to state his case, or has suspended or expelled him for inadequate or irrelevant reasons or in bad faith.

A member who feels he has been unfairly, unjustly or unconstitutionally suspended or expelled may be entitled to seek a declaration from the Court that the action by the committee was invalid and an injunction restraining the committee or persons acting on their behalf from interfering with his exercise of the rights and privileges that he is entitled to as a member. The Court may also award damages, although such an award will usually be made only where the committee's behaviour has been exceptionally wrong.

This underlines the importance of clubs/class associations applying the proper principles, and following correct procedures, when a member's behaviour is felt to warrant disciplinary action.

If an organisation has regard to three basic rules, then a subsequent court decision overruling its finding may be unlikely:-

1. The behaviour complained of should merit disciplinary action
2. The decision-makers must be unprejudiced
3. The member should have a full and fair hearing

1. The behaviour complained of should merit disciplinary action

The criminal law recognises that some offences are more serious than others, and a judge sentencing a guilty party will apply a nationally agreed "tariff"; anything from an absolute discharge to life imprisonment. Clearly a club/class association committee does not have such wide range of penalties at its disposal, but warnings, short term suspensions and (for racing sailing clubs) Rule 69 proceedings (which can cover conduct both on and off the water in the course of an event held under the Racing Rules of Sailing) are all available as alternatives to permanent expulsion.

The committee must consider whether the conduct complained of actually amounts to an "offence" at all. The fact that a certain committee member does not like criticism, or is involved in a private altercation with another member, does not of itself give the club/class association the right to initiate disciplinary proceedings.

Before a disciplinary hearing is held, the complaint should be properly investigated independently and objectively by someone who will not be involved in the disciplinary decision. The investigation might involve checking facts and taking statements from members who have witnessed the behaviour complained of, as well as the complainant and the member who is the subject of the complaint.

In addition to this first principle, once the decision to initiate proceedings has been taken, the principles of natural justice must then be applied as follows:-

2. The decision-makers must be unprejudiced

This means that any committee member who is either one of the complainants, or related to one of the complainants or to the member who is the subject of the complaint, or has previously been involved in disciplinary action against the member, should take no part whatsoever in the proceedings and should refrain from trying to influence other committee members in private conversation.

Depending on the size and resources of the organisation, it may be preferable for the committee to appoint a smaller panel to conduct the initial hearing, rather than hold the hearing in the presence of the full committee, particularly if the alleged behaviour is of a sensitive nature. This also has the benefit of leaving some committee members available, who have not been involved in the initial disciplinary decision, to hear any subsequent appeal (if the club's procedure includes a right of appeal).

3. The member should have a full and fair hearing

In practice this means that he should:

- be told in advance the precise nature and details of the complaint against him;
- be given in advance any written statements made by witnesses;
- be entitled to attend the committee meeting and, if so desired, to have someone to attend with him. However, there is no automatic right to have legal representation i.e. have a lawyer speak on his behalf; this is a matter for the committee to decide;
- be entitled to cross-examine any adult witnesses, produce his own witnesses, give evidence himself, and make a closing statement;
- not be subject to unreasonable time restraints in any of the above. For example, he should be given all the relevant documents at least 3 weeks before the hearing, and the committee should be prepared at the very least for a 2-hour hearing; in many cases it may take longer.

If the alleged misconduct warrants it, the member may have his membership temporarily suspended pending the conclusion of the investigation and any subsequent disciplinary process.

If an organisation utilises suspension as a sanction following the hearing, it should be for a specified period of time.

In appropriate circumstances an organisation may seek to agree some other form of resolution to the disciplinary issue with the member concerned, for example a letter of

apology. However, such a resolution can only be agreed with the consent of both parties and cannot be enforced against the member against his will. If the member concerned is not willing to agree with the proposed alternative means of resolving the issue the organisation will have to revert to the sanctions as contained in the Constitution.

Right of appeal

A club/class association may choose to include a right of appeal in its disciplinary procedure. The member should be given a specified period within which to submit his appeal. An appeal may be made on the following grounds:

- the organisation has failed to follow a fair process; and/or
- the member feels that the sanction is disproportionate to the offence.

Any appeal should, if at all possible, be heard by a panel of committee members who were not involved in the original disciplinary hearing.

Confidentiality

It is important to ensure that disciplinary action is kept confidential at all times. We are aware of some situations in which members believe themselves to be entitled to receive information from the committee relating to the disciplinary action against another member on the basis that the organisation is run for, by and on behalf of its members. However, members subject to disciplinary procedures are entitled to rely on the doctrine of implied confidentiality and this overrides any claim that members may feel they have to obtaining disciplinary information about other members.

The fact that the committee has considered a disciplinary matter should be recorded in the general committee minutes but the detail of the discussion should be put in a separate paper so that it is not generally available to members. It is important for the organisation to record disciplinary discussions and keep the record for an appropriate length of time¹. Similarly, the notes from the disciplinary hearing itself should be recorded and kept confidential.

The final decision on the disciplinary action, e.g. expulsion/suspension etc. may also be recorded in the general committee minutes.

A member who is subject to disciplinary action, is entitled to waive his/her implied confidentiality in which case it is permissible for a club/class association to report the disciplinary action to its membership. However, clubs/class associations should not seek to impose a waiver on the member, nor should they attempt to encourage it; it is a personal matter for the member to determine in appropriate circumstances.

If there is a right of appeal to all the members in General Meeting and the member subject to disciplinary action elects to utilise his right of appeal, he is in effect waiving his right to implied confidentiality.

¹ Please see our Data Protection Guidance for information on keeping records and appropriate length of time.

It is not unusual for the subject of a disciplinary matter to threaten legal proceedings. If that is the case the organisation should put its insurers on notice of a potential legal action.

Disciplinary proceedings in clubs are always fraught with difficulties. Adherence to the above principles will probably suffice in most cases to satisfy a court that the member has been fairly dealt with.

Sample Disciplinary Procedure

Introduction

[XXX club/class association]'s disciplinary procedure applies to all members of the [club/class association] and aims to ensure that all members are treated fairly and consistently in regard to their conduct. The procedure may be reviewed and amended by the committee from time to time to meet any change in requirements.

Principles

- No disciplinary action will be taken until an investigation has been undertaken by a person/persons, appointed by the committee, who will not be involved in any subsequent disciplinary decision.
- Disciplinary matters will be concluded without undue delay.
- Disciplinary matters will be treated confidentially and only those directly involved in the procedure will be informed.
- Disciplinary matters will normally be heard by the committee, with a right of appeal (if the club/class association's procedure includes a right of appeal) to the members at a General Meeting.
- The committee may appoint a smaller panel to conduct the hearing, with a right of appeal (if the club/class association's procedure includes a right of appeal) to a further panel of committee members who have not been involved in the original hearing.
- A member who is the subject of disciplinary action will be advised in writing of the nature of the complaint against him, will be allowed sufficient time to prepare for a disciplinary hearing, and will be given the opportunity to state his case.
- The member will have the right to be accompanied by a fellow member, or by another representative (but not a legal representative) at the discretion of the committee/panel.
- The member will have the right to appeal (if the procedure includes a right of appeal) against any sanction or penalty imposed, and for that appeal to be heard by a panel of [committee] members not involved in the original disciplinary hearing.
- A proper record will be kept of any disciplinary decision, taking into account the need for confidentiality.
- A complainant will be informed when the matter is concluded, but does not have the right to be informed of the nature of any sanction or penalty imposed.

Examples of misconduct offences include but are not limited to the following:

- Failure to comply with club/class association rules, byelaws, regulations, policies or codes of conduct, including health and safety and safeguarding policies.
- Failure to pay membership subscriptions, boat fees or other monies owed to the club/class association within a reasonable time.
- Theft or misappropriation.
- Deliberate damage to the property of the club/class association or a member.
- Assault on or deliberate injury to a member, guest or employee.
- Foul, abusive or discriminatory language or behaviour or harassment.
- Harming or placing at risk of harm a child or young person aged under 18 or a vulnerable person.
- Conduct, whether within or outside the club/class association, which might bring it into disrepute by association.

Procedure

Receipt of complaint

1. A complaint is received by the [club/class association] and passed to the [Commodore] and acknowledged.
2. The [Commodore] informs the committee that a complaint has been received and appoints a member to investigate it.
3. If the presence at the [club/class association] of the member who is the subject of the complaint may put others at risk, his membership and/or attendance may be temporarily suspended pending the investigation and the outcome of any subsequent disciplinary hearing.

Investigation

4. The matter is investigated; this may include speaking to the complainant and gathering statements from any witnesses. In the case of failure to make a payment, it may involve checking the club's financial records.
5. If, during the course of the investigation, it appears that the member may have committed a criminal offence, this may be reported to the Police and the internal disciplinary procedure will be put on hold until any Police investigation and subsequent prosecution has been concluded.

Hearing

6. If appropriate the [Commodore] appoints [xx] number of committee members to make up a Disciplinary Committee, (the member who conducted the investigation may be asked to present the case on behalf of the club/class association), excluding any member who is related to either the complainant or the member who is the subject of the complaint, and any member who has been involved in a previous disciplinary action involving the same member.

7. The date, time and venue for the disciplinary hearing are decided, allowing sufficient time for the member to prepare his case.
8. The member is informed in writing of the nature of the complaint, is asked to attend the disciplinary hearing, informed of his right to be accompanied and provided with copies of this procedure, any relevant documents and witness statements.
9. If the member is unable, for good reason, to attend on the appointed date, the Disciplinary Committee should endeavour to agree a suitable alternative date. If the member is unable to agree a mutually acceptable date within a reasonable period, the hearing may take place in his absence.
10. The disciplinary hearing takes place.
11. No witnesses or statements should be introduced at the hearing without prior notice and copies of all written evidence must be produced for consideration prior to the hearing, to be available in advance to the parties.
12. The Disciplinary Committee may adjourn the hearing to allow further evidence to be referred to if the Disciplinary Committee considers it fair to do so.

Decision

13. The Disciplinary Committee decides whether misconduct has taken place, and if so decides on an appropriate and proportionate sanction or penalty.
14. After the Disciplinary Committee has reached a decision, the subject of the complaint will be notified in writing of such decision and informed of any penalties within 7 days of the decision being reached, penalties will be effective from the date of the decision. If relevant, the member should be informed of his right of appeal and the timescales involved.
15. A record is made of the disciplinary decision.

Appeal

16. If the member appeals, the matter is referred either to the members at a General Meeting or to a further panel of committee members who were not involved in the original hearing. The appeal hearing may uphold the original decision, reverse it, or reduce the penalty but may not increase it.
17. The appeal decision is final.

Conclusion

18. The complainant is informed that the matter has been concluded.

Appeals:

An appeal may be made on the following grounds:

- the club/class association has failed to follow a fair process; and/or
- the member feels that the sanction is disproportionate to the offence

If an appeal is to be made then written notice of appeal [by way of 1st class recorded delivery] to the Secretary must be given by the member, within [28 days] of being notified of the decision. No appeal will be valid or considered after that period has elapsed. The member must give full written grounds for the appeal, stating exactly what is being appealed against and the reasons for this.

An appeal hearing will be convened as soon as practicable and will consist of an Appeal Committee of [3 members] who did not take part in the first hearing and who will elect their own Chairperson (who will have the casting vote).

New evidence cannot be presented at the appeal hearing. The Appeal Committee shall have power to uphold the original decision, reverse it, or reduce the penalty but may not increase it. The decision of the Appeal Committee is final and binding on the parties.

Sample Code of Conduct

[Club/class association name] expects all members and their guests to show respect and understanding to each other, treat everyone equally and conduct themselves in a way that reflects the principles of the club/class association.

Abusive, aggressive or discriminatory language or behaviour, or a lack of respect for other people and their property, will not be tolerated. Misconduct should be reported to the Committee and may lead to disciplinary action.

([Club/class association name] implements the RYA Racing Charter and members will be expected to sail in compliance with it.)

Club/class association members are expected to:

- Abide by the club's/class association's Rules.
- Follow the club's/class association's [operating], [COVID-19], [safety], [social media] and [safeguarding] procedures.
- Treat members and visitors with respect and understanding, regardless of age, disability, gender identity, race, religion or belief, sex or sexual orientation.
- Avoid the use of language that others may find offensive, whether on club premises, at a club/class association event, or when using the club's/class association's social media channels).
- Encourage all members to play as full a role in the club/class association as they wish to and support them in developing their skills and experience.
- Recognise the contribution of coaches, instructors, officials and volunteers.
- Prioritise the safety and wellbeing of participants.
- Promote courtesy to other water users.
- Use established procedures where there is a genuine concern or dispute.

Club/class association members can expect to:

- Feel welcome and valued.
- Be respected and treated fairly.
- Be listened to and kept informed.
- Be involved and contribute towards decisions within the club/class association.

If you have any queries, questions or comments on the information contained in this leaflet, kindly contact the Legal Team on 023 8060 4223 or legal@rya.org.uk.

RYA Responsibility Statement:

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