

## Rules Specialist Group 2017-2020 Racing Rules of Sailing

### Arbitration for OCS redress claims

Issued 8 August 2018

#### 1. RSG Handling of OCS Redress Claims

The RSG received the following proposal from Nick Hutton to change the arbitration rule to allow redress claims for OCS incidents to be dealt with by an Arbitrator. The proposed changes are in **red**.

#### App T2 Arbitration Meeting

An arbitration meeting will be held prior to a protest hearing for each incident resulting in a *protest* by a boat involving one or more rules of Part 2 or rule 31, but only if each *party* is represented by a person who was on board at the time of the incident. No witnesses will be permitted. However, if the arbitrator decides that rule 44.1(b) may apply or that arbitration is not appropriate, the meeting will not be held, and if a meeting is in progress, it will be closed.

**A competitor who disagrees with their score, including OCS, UFD or BFD, should initially request a scoring review. If they are not satisfied with the result of the scoring review, they should lodge a request for redress and an arbitration meeting will be held. The competitor must bring to the arbitration any evidence, including physical evidence, they would present to the protest committee.**

#### T3 Arbitrator's Opinion

Based on the evidence given by the representatives, the arbitrator will offer an opinion as to what the protest committee is likely to decide:

- a) the *protest* or **request for redress** is invalid,
- b) no boat will be penalised for breaking a rule, or
- c) one or more boats will be penalised for breaking a rule, identifying the boats and the penalties,
- d) the request for redress for an OCS/UFD/BFD will be denied**
- e) the request for redress for an OCS/UFD/BFD will be granted**

#### T4 Arbitrator's Meeting Outcome

After the arbitrator offers an opinion,

##### **For a Protest**

- (a) a boat may take a Post-Race Penalty, and

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(b) a boat may ask to withdraw her *protest*. The arbitrator may then act on behalf of the protest committee in accordance with rule 63.1 to allow the withdrawal.

Unless all *protests* involving the incident are withdrawn, a protest hearing will be held.

#### For a Request for Redress

- (a) a boat may withdraw her request for redress
- (b) a boat will be reinstated to her finishing position, or if she was excluded from the restart of the race, have average points applied calculated using an average of all races sailed except the last day of the regatta, and may withdraw her request for redress
- (c) if the Arbitrator's opinion is that the request will be denied, and a protest committee confirms the RC's original score of OCS, UFD or BFD, a discretionary penalty may be added to the boat's net regatta score.

Unless the request for redress is withdrawn, a hearing will be held.

Then we need to add this to the Race Management Policies:

All requests for redress relating to scores of OCS, UFD and BFD shall be dealt with as part of the Arbitration process. All RC and competitor evidence, including physical evidence, shall be presented at Arbitration. If the Arbitrator's opinion is that the request for redress is likely to be granted, the RC may reinstate the competitor to his/her finishing position in the race. If the competitor was excluded from the restart of the race, the RC may apply average points for the race, calculated using an average of all races sailed except the last day of the regatta.

If the Arbitrator's opinion is that the request for redress is likely to be denied, the competitor may withdraw the request for redress. If the competitor does not withdraw the request for redress, and the RC's original decision on OCS, UFD or BFD is confirmed, a Discretionary (Standard?) Penalty will be added by the Protest Committee to the competitor's net regatta score.

## 2. Response from the RSG

The system proposed above is a halfway house between an arbitration and a full protest. It allows both the competitor and the RO to bring in all evidence and this would necessarily include hearing from all witnesses, so the process will not really take any less time than a protest. After going through this process, the decision is not binding and may lead to the full process having to be repeated in a hearing.

The idea of a points penalty being added to a competitor's final score for failing to win a subsequent claim is not supported for the following reasons: -

- it appears punitive;
- discourages competitors who should request redress, from doing so;
- is akin to a fee for protests;
- A boat is being penalised for doing something which is allowed in the rules;

In addition, the fixed redress that can be given at arbitration takes away the opportunity for a competitor to request redress better than his average points if the actual finishing place was a lower score and this would lead to successful arbitrations also not being accepted resulting in a full hearing.

Another point to note is that an extra person will be required to be the arbitrator as it would not be acceptable for the arbitrator to sit on the protest panel.

This could be achieved by requesting the jury chair to hear redress for OCS claims first.

In making the above comments the RSG would have no problem in trials being carried out but it is up to Australian Sailing to approve such trials in accordance with rule 86.1 and its accompanying prescription.

**John Standley**  
**On behalf of the Rules Specialist Group**  
**8<sup>th</sup> August 2018**

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