

DISCRETIONARY PENALTIES

The standard penalty for a breach of a rule in sailing is disqualification. However, it is becoming increasingly common for the penalty for some rules to be decided by the protest committee. Such penalties may be less than disqualification and are known as discretionary penalties. The rules concerned may be specified in the Racing Rules of Sailing (RRS), such as rule 41(a) (Outside Help when a crew member is ill, injured or in danger) and, since 2017, rule 55 (Trash Disposal), or in the notice of race (NoR) or sailing instructions (SIs) themselves.

The RYA does not support discretionary penalties for breaches of the rules of Parts 1 and 2 of the RRS, except in the context of RYA Arbitration or the Exoneration Penalty – see RYA guidance on ‘Rules Disputes’ at www.rya.org.uk/go/rulesdisputes – or in long distance races.

If discretionary penalties are to be used, additional to those in the RRS, care must be given to the drafting of the NoR and SIs and to which rules they will be applied.

Since the notation [DP] has been included from 2017 in the Introduction within the RRS, it is now possible to add this notation to NoRs or SIs instead of stating:

The penalty for a breach of [rule] may, at the discretion of the protest committee, be less than disqualification.

When [DP] is to be used, the RYA recommends that the appropriate document includes the following statement at the outset:

The notation ‘[DP]’ in a rule in the (NoR/SI) means that the penalty for a breach of that rule may, at the discretion of the protest committee, be less than disqualification.

If the penalty for a breach of a rule of the RRS is to be made discretionary, this should be shown under ‘Rules’ in the NoR or SIs as ‘rule xx.x [DP]’.

It is quite common to apply discretionary penalties to all rules other than the rules of Parts 1 and 2 of the RRS. When doing so, the RYA recommends the following statement:

The penalty for a breach of a rule, other than a rule of Parts 1 and 2 of the Racing Rules of Sailing, may, at the discretion of the protest committee, be less than disqualification.

The scoring abbreviation for a discretionary penalty is ‘DPI’. It is not necessary to amend rule 64.1 as it already allows discretionary penalties. If the protest committee decides that a penalty greater than disqualification may be appropriate, then it should consider initiating action under rule 2 or rule 69.

How to Decide a Discretionary Penalty

When a protest committee has discretion to decide the appropriate penalty for a breach of a rule, the penalties available may range from no penalty to disqualification. However, it is important that

consistent decisions are made when exercising this discretion. The RYA therefore recommends that the following guidelines be observed when assessing penalties.

Penalties should be considered in 5 bands:

- Band 0 – zero penalty
- Band 1 – 1% - 10% place penalty (mid-point 5%)
- Band 2 – 10% - 30% place penalty (mid-point 20%)
- Band 3 – 30% - 70% place penalty (mid-point 50%)
- Band 4 – disqualification

Place penalties are more appropriate and applicable than time penalties, even in handicap racing. There may be events where time penalties are appropriate, but these will be rare.

1. The first step is to decide in which band to start. The protest committee should refer to the table below, where the RYA suggests bands for some examples of the more common breaches of rules that may result in discretionary penalties.

If a band is not recommended, then the protest committee will have to choose a starting band, using the examples where possible to assist.

BREACH	BAND
BERTHING, HAUL OUT AND REPAIRS	
Boat not in assigned place	0
Boat launched or removed from water not in accordance with schedule	2
Making modification or repairs without required permission	3
EQUIPMENT AND MEASUREMENT CHECKS	
Failure to comply with instructions	
- Careless, but no other effect	1
- Causing disruption to the inspection process	3
ELECTRONIC EQUIPMENT PROVIDED BY ORGANIZING AUTHORITY	
Failure to collect or return equipment as required	1
Failure to install or comply with installation instructions	2
If equipment was installed but its functionality is interfered with	4
If a boat refuses installation of equipment	4
CHECK IN – CHECK OUT AND REPORTING RETIREMENT	
Failure to check-out before going afloat	1
Failure to check-in coming ashore, or at race committee boat afloat	1
Failure to comply with requirements for reporting retirement	1
When non-compliance results in initiation of search and rescue	4
STARTING AREA AND OTHER COURSE AREA RESTRICTIONS	
If boat does not interfere with an official boat or boats racing	1
If boat interferes with an official boat or boats racing	2
If contact occurs with an official boat	3
PERSONAL FLOTATION DEVICES, RULE 40	
Failure to comply with requirements when racing is postponed due to lack of wind and with a support boat in attendance	0
Failure to comply with requirements while racing	4

BREACH	BAND
OUTSIDE HELP, RULE 41 Help given to assist with safety (or in compliance with rule 1) Help not permitted by rule 41 but with no advantage gained Significant advantage or tactical information given	0 2 4
TRASH DISPOSAL, RULE 55 If due to safety reasons Such as the remains of a sandwich Such as a glass bottle	0 2 4
IDENTIFICATION ON SAILS, RULE 77 Incorrect placement Failure to display or unreadable characters Incorrect numbers or country code	0 1 2
CLASS RULES, RULE 78, AND OTHER REGULATIONS Sail set outside bands Modification of manufacturer supplied and controlled equipment Prohibited fairing or refinishing of hull/foil surfaces Safety equipment missing or inadequate Use of prohibited GPS or other electronics Missing or misplaced correctors Equipment outside measurement tolerances (excluding wear and tear) - No possible effect on boat speed - Possible but not significant effect on performance - Significant effect on performance	2 3 3 4 4 4 1 2 4
ADVERTISING, RULE 80 Applied but fails to stay in place Incorrect placement Failure to wear bibs, display crew names etc.	0 1 1
ENTERING A PROHIBITED AREA If entered due to a navigational error If entered deliberately to gain advantage	1 4
RADIO COMMUNICATION Having a prohibited communications device on board, but ensuring not used Using a prohibited communications device	3 4
REPLACEMENT OF EQUIPMENT Failure to make prompt request for replacement where required Failure to comply with requirements for replacement afloat	1 2
CODE OF CONDUCT (NOT RULE 69) ¹ Failure to comply with a reasonable request by an official Failure to handle supplied equipment in an appropriate manner	2 3

¹ For guidance on rule 69 (and rule 2) penalties, see World Sailing's 'Guidance on Misconduct' at www.sailing.org/racingrules/documents and the RYA's 'Misconduct' on (yellow) pages 198-199 of the RYA version of the Racing Rules of Sailing 2017-2020

2. The second step is to consider the following questions in order to decide if there is a reason, based on the facts of the case (beyond what is already defined in the table above), whether or not it is appropriate to increase the band or the penalty within the band:
 - Was the breach deliberate? Increase band at least one level – and consider rule 2.
 - Was there any attempt to conceal the breach? Increase band at least one level – and consider rule 2.
 - Has the breach been repeated?
 - Did the breach compromise the safety of competitors, race officials or general public?
 - Did the boat gain a competitive advantage through her breach?
 - Could the breach bring the sport or the organization into disrepute?
 - Did the breach result in damage or injury?
 - Was the breach a careless or cavalier disregard of the rules?
 - Was anybody inconvenienced by the breach?

3. The third step is to consider the following questions in order to decide if there is a reason, based on the facts of the case, whether or not it is appropriate to decrease the band or the penalty within the band:
 - Was the breach necessary for the safety of the boat or her crew?
 - Was there a good reason or justification for the breach?
 - Was the breach reported by the competitor?

In general, the protest committee should apply the following principles:

- A change to a different band should only be made when justified by the facts of the case. □ Any penalty must exceed any likely gain.
- A discretionary penalty should not make a boat's score worse than retirement or disqualification.
- Percentage penalties are calculated and rounded to a whole number of points in accordance with rule 44.3(c). The penalty should be based on the size of the fleet on the day of racing (or, if racing in flights, the size of the largest flight).
- When a breach affects more than one race in a day but it is appropriate to penalise in one race only, the penalty should be applied to either the first race of the day or to the race nearest the incident.

In all cases, the protest committee's decision should adequately explain how the committee has come to any penalty. Deviating from this guidance is justified if there is a good reason to do so, but the protest committee should explain its reasoning in the decision.

Support Persons

A new rule has been included since 2017 (RRS 64.4) that allows protest committees to penalise a support person who is a party to a hearing and who has broken a rule. The protest committee can issue a warning, exclude the person from the event or venue or remove any privileges or benefits, or take any other action within its jurisdiction as provided by the rules.

The protest committee may also penalise a competitor for a rule breach by a support person by changing a boat's score in a single race (up to and including DSQ) when it decides the competitor may have gained a competitive advantage as a result of the breach by the support person or the support person commits a further breach after the competitor has been warned that a penalty may be imposed. A protest committee should exercise caution before penalising the competitor under this rule.

