

# "PROTEST MEDIATION"

## AN EXPLANATION FOR CLUBS, ASSOCIATIONS & EVENT ORGANISERS

Protests can be a disruption. They can often be difficult to organise, can be a cause of ill-feeling, and hearings lasting long into the night can spoil an otherwise enjoyable regatta.

In many cases competitors will not lodge their protests because they prefer not to have to go through a full protest hearing. But protests should not be discouraged. Protests are a means of sorting out differences, giving people a better understanding, and ensuring that all play the game by the rules.

Many events are now using "protest mediation". This has reduced protest time dramatically. Some events have reported the number of full protest hearings has reduced by as much as 75%.

Protest mediation is not a 100% cure. It should be used only for the right-of-way and other sailing rules contained in Parts 2 and 4 of the rule book. Protests involving more technical arguments, requests for redress, class matters, etc are best handled in the normal way.

Protest mediation can be considered as a quick (never more than 10 minutes) preliminary hearing conducted in any quiet place as soon as possible after the race and involving only the two skippers and the mediator.

Good mediators are often experienced skippers with a good knowledge of the rules. They do not need to be protest committee people. A mediator has the authority to either:

- conclude the protest is invalid (the usual protest form must first be completed by the protesting skipper), or
- conclude the protest is not a right-of-way matter and refer the protest to a full hearing, or
- conclude no rule was broken, and allow the protesting skipper to either withdraw the protest or still have a full hearing, or
- conclude a rule was broken, and allow the protested skipper to either accept a prescribed penalty (which will be less than a protest room penalty) or still have a full hearing (where the result could be either protest dismissal but possibly disqualification).

So as to assist competitors to better understand mediation, the following recommended wording can be placed on the notice board or printed out and made available to competitors with their sailing instructions.

# NOTICE TO ALL COMPETITORS

## PROTEST MEDIATION

Protest mediation may be a new concept to many competitors. It is used to reduce the need for full protest hearings, as:

- \* It will give a protesting boat the opportunity to withdraw the protest before there is a protest hearing.
- \* It will give a protested boat the chance to avoid a full protest hearing by accepting a lesser penalty than may be received at a protest hearing.

After a protest form has been completed and lodged, the protestor and the protestee and a "mediator" will sit somewhere quiet to discuss the incident in (we hope) a friendly way.

The mediation hearing will last for just a few minutes.

There will be just the three in attendance. No witnesses will be involved.

All that is said to the mediator will be kept private. If the matter still goes to a full protest hearing then the mediator may be part of the protest committee, but anything that he has been told at the mediation hearing can be repeated to the protest committee only while the competitors are present.

The mediator will try to settle the matter. If he believes a rule has been broken then that boat can accept half the loss of points it would receive if it decided to go through a full protest hearing and was disqualified. ("Half the loss" means if say a boat finished 5th in a race, but would receive 15 points if disqualified, it would receive 10 points if it accepts the mediator's conclusion.)

A mediation hearing cannot "force" a competitor into any course of action, because -

- Even if the mediator believes no rule was broken, the protesting boat may still have the matter taken to a full protest hearing.
- Even if the mediator believes a rule was broken by a boat, that boat can still have the matter taken to a full protest hearing.

So there are no disadvantages in the system - only advantages.