

## **When is an alternative penalty not an alternative penalty?**

Originally, there was only one penalty for a boat which infringed the Racing Rules of Sailing (RRS). An infringing boat had no alternative other than to retire from the race. Over time, Yacht Racing authorities saw fit to introduce penalties for infringements which were more in keeping with the severity of the infringement. Perhaps this was because they were getting sick and tired of spending so many hours in the Protest Room, and sailing was becoming a court battle rather than a sport!

The system of Scoring Penalties (accepting a scoring increase) was the first attempt to make the penalty fit the crime. A 20% increase in the final score was applied to that race. Soon after this, the 720 degree penalty turns were introduced, where skippers could exonerate themselves on the water by sailing through two complete turns prior to continuing in the race.

Radio Sailing introduced a 360 degree penalty as the length of races was not as long as for full size yacht racing. At the last rules revision (2009-2012), the 360 degree requirement was withdrawn, and replaced with a requirement to perform one tack and one gybe in the same direction, as an alternative.

The relevant rule which allows this alternative method of exoneration is Rule 44, which reads as follows:

### **44 PENALTIES AT THE TIME OF AN INCIDENT**

#### **44.1 Taking a Penalty**

*A boat may take a Two-Turns Penalty when she may have broken a rule of Part 2 while racing or a One-Turn Penalty when she may have broken rule 31. Sailing instructions may specify the use of the Scoring Penalty or some other penalty. However,*

*(a) when a boat may have broken a rule of Part 2 and rule 31 in the same incident she need not take the penalty for breaking rule 31;*

*(b) if the boat caused injury or serious damage or gained a significant advantage in the race or series by her breach her penalty shall be to retire.*

#### **44.2 One-Turn and Two-Turns Penalties**

*After getting well clear of other boats as soon after the incident as possible, a boat takes a One-Turn or Two-Turns Penalty by promptly making the required number of turns in the same direction, each turn including one tack and one gybe. When a boat takes the penalty at or near the finishing line, she shall sail completely to the course side of the line before finishing.*

**Appendix E** (Radio Controlled Yacht Racing Rules) replaces all mentions of a two turn penalty with a one turn penalty including one tack and one gybe.

## **EXCEPTIONS**

There are a number of situations under which a One-Turn alternative penalty is not permitted, or is not the appropriate penalty for an infringement.

### **RULES OF PART 2 ONLY:**

Not all infringements of the rules are able to be exonerated by the alternative penalty under Rule 44. The alternative penalty can only be used in the event that the rule infringed is a Rule of Part 2 (When Boats Meet – Rules 10 to 24) or Rule 31 (touching a mark). Therefore, in the event that a skipper breaches a rule of Part 1 – Fundamental Rules, or other Parts of the RRS, the penalty remains disqualification from the race (or series). Similarly, measurement infringements are not covered by Rule 44.

### **SERIOUS DAMAGE OR INJURY:**

In the event that a boat causes serious damage to another, the infringing boat is unable to exonerate with a one-turn penalty. The only recourse is to retire from the race, or face disqualification.

### **SIGNIFICANT ADVANTAGE:**

Consider a fleet of 10 boats approaching a mark. Another boat coming to the mark just behind this group is faced with the choice to sail right around the ten boats or to crash into the mark and the inside boat, take the penalty and continue. In this situation, it could be argued that the boat infringing has received a significant advantage, and therefore, the alternative penalty is not an acceptable exoneration for that infringement.

A boat can not receive an advantage by committing an infringement and performing an alternative penalty.

### **WHERE TO PERFORM THE PENALTY:**

Rule 44.2 states that a boat must sail “well clear of other boats”. A boat must not perform her penalty in the path of other boats. Rule 44 is a rule of Part 4 of the RRS, and it could be argued that a boat infringing other boats whilst performing the one-turn penalty has broken this rule. There is no alternative penalty for breaking a rule of Part 4. Note that the word “initially” was present in the 2005-2009 Rules (*a boat must initially sail well clear of other boats*), but has been removed from the 2009-2012 rules.

In practice, there are circumstances under which a boat infringing another boat whilst performing a One-turn penalty is able to exonerate itself by sailing another penalty. The infringing boat would be required to show that she did sail well clear of other boats prior to initiating the penalty. Note that the Rule makers did not insert the words “sail completely clear of other boats”. In the event that another boat appears on the scene very late (as can happen on very light days) the infringing boat may have complied with the requirements of Rule 44. Under these circumstances, another alternative penalty could be sailed to exonerate that second infringement.

Many boats attempt to perform a penalty turn right in the path of other boats. In the event that the turn is able to be completed without interfering with another boat, there is no problem. However, a skipper undertaking this manoeuvre has the onus of proof to show that they did not interfere with other boats during the penalty turn. Other boats in the vicinity are not required to anticipate that a boat will perform a penalty, and are not required to commence to keep clear until the boat performing the turn has completed the turn.

### **WHEN TO PERFORM THE PENALTY:**

Rule 44.2 also states that the penalty should be performed ‘as soon after the incident as possible’. In earlier versions of the Rules, boats were required to perform the penalty either prior to rounding the next mark, or immediately. Both have been removed from the stipulations of the Rule in the 2009-2012 version of the RRS.

The requirement to perform the penalty as soon as possible after the incident is covered in US Appeals Case 60. This case was one where an infringing boat sailed on about 15 boat lengths without any evidence that any other boat’s presence prevented her from performing penalty turns prior to actually doing the penalty. She was disqualified for not complying with Rule 44.2. Excerpts from the case follow:

- *Rule 44.1 does not provide time for a boat to deliberate whether she has broken a rule. If a boat decides too late that she has broken a rule, the penalty provided by Rule 44 is not available to her.*
- *Rule 44.1 permits a boat to take a penalty at the time of the incident. Rule 44.2 requires the boat to sail well clear of other boats as soon as possible after the incident and promptly make two turns as described in the rule. Together, these rules require a boat that decides to take a penalty to do so as soon as possible after the incident. The rule does not provide for time for a boat to deliberate whether she has broken a rule. If she delays in doing her penalty turns, she is still liable to be disqualified.*

In this case, the Appeals Committee and Protest Committee were convinced that 15 boat lengths, in the absence of other boats, was more than sufficient time and opportunity for a boat to react. I am unable to find other precedents, but each situation would need to be measured on its merits.

A boat which infringes can gain a significant advantage on occasions by delaying a performing a penalty turn. These could be waiting till the wind increases on a light day, or by waiting until nearing the top mark if the infringement occurs at the start. In both cases, this skipper has not complied with the requirements of Rule 44.

### **HOW TO PERFORM THE PENALTY**

The Rule stipulates that the penalty turn must be sailed in one direction. It is unacceptable to sail through a gybe in one direction, then change your mind and tack in the other direction. The manoeuvre also needs to be sailed in one continuous motion. If a boat gybes, then sails a few boat lengths before tacking, it could be argued that this manoeuvre does not comply with the provision of a ‘turn’. Once again, the onus would be on the skipper to prove that they had performed an appropriate penalty.

### **CONCLUSION**

Generally, skippers don’t like protests. They interfere with sailing time and are not good for overall enjoyment of the sport. The provision of an alternative which allows infringements to be sorted out on the water is a good thing. However, like most things, there are those who will seek to take every advantage, and ignore or stretch the rules. An understanding of all the requirements of Rule 44 is important. Clearing infringements on the water has to be a good thing for everyone individually as well as the sport in general.