

DALGETY BAY SAILING CLUB

Complaints and Disciplinary Procedures (See Clause 11 of the Constitution)

1. Initiation of Complaint

If any complaint about any individual member of a Club is made it should be directed in writing to the Secretary and should provide full details as to the incident complained of, including the place, date and time, the nature of the events complained of and identification of the individuals involved, including any witnesses. Should the Management Committee become aware of any cause for concern, it may raise a complaint in its own name, on an *ex proprio motu* basis. It is within the power of the Management Committee to suspend any member against whom a complaint is made if, in the Management Committee's view, it would be for the good of the Club so to do, pending these Complaints and Disciplinary procedures being carried out.

2. Initial Procedure: remit to Investigating Officer

Other than complaints made by the Management Committee in its own name, the Secretary will table the complaint at the first available meeting of the Management Committee. The Management Committee will not at that stage view the complaint in any manner or way other than to note that it has been received and to acknowledge it. The Secretary should acknowledge the complaint to the Complainer, and inform the Member complained of that a complaint has been received, and should notify both of the procedure to be followed. The Management Committee should appoint an Investigating Officer, to be a member of the Club who is neither biased for or against either the Complainer, or the member complained of.

3. Function of Investigating Officer

The Investigating Officer's task will be to fully, thoroughly and fairly investigate the complaint and to report to the Complaints Sub-Committee in manner following. The Investigating Officer will be required to interview the Complainer, the party or parties complained against, and all witnesses. The Investigating Officer will be required to keep full notes with regard to his investigation and to compile a full written Report, to be submitted wherever possible not more than 30 days from the time that the complaint is passed into his hands. The Investigating Officer will recommend whether or not he feels that the complaint should be examined further.

4. Initial disposal, & further procedure if complaint found to be *prima facie* valid

If the Investigating Officer recommends that there be no further action in his Report and if his Report is approved by the Management Committee, then the complaint terminates there, and the Secretary should inform all relevant parties, in writing, at the first available opportunity. If the Investigating Officer's Report recommends that further action may be appropriate, the Management Committee will immediately form a Complaints Sub-Committee to determine the complaint, and the Report will be passed to the Complaints Sub-Committee who shall copy it to the complainer and member complained against.

5. Formation and Composition of the Complaints Sub-Committee

The Complaints Sub-Committee shall comprise one Senior Officer and two other Club Members. In electing or co-opting the Members of the Complaints Sub-Committee, the Management Committee will require to ensure that the composition thereof is even-handed,

showing no bias for or against either Complainer or Member complained of and comprises no member who has had any involvement with the complaint. If a member of the Complaints Sub-Committee feels that he has a bias or is deemed by the Management Committee to have a bias, he may be replaced with a co-opted or elected alternate. The regulation of the Complaints Sub-Committee shall be in accordance with the principles of the Constitution and the Complaints Sub-Committee shall have the specific power to deal with the complaint, all in terms of these procedures. The Management Committee will appoint by election or co-option a member of the Club, to be an uninvolved and unbiased individual, to be Investigating Officer.

6. Complaints Sub-Committee: initial procedure

The Complaints Sub-Committee should convene within 21 days of having been formed. If it decides that there should be no further action it should inform the Management Committee in writing at the first available opportunity, and the Secretary should inform all relevant parties, in writing, at the first available opportunity. If the Complaints Sub-Committee considers that there is a case to answer it will require to report this to the Management Committee, but will remain entrusted with the disposal of the complaint. The Complaints Sub-Committee will then fix a date, to be within 30 days, for a Hearing to determine the matter. The Complaints Sub-Committee will require to notify Complainer, and Member complained of, of the full facts of the case as placed before it by the Investigating Officer: and will require to notify witnesses that their attendance will be required. The Member complained of may notify the Complaints Sub-Committee in writing within 21 days if the Hearing date is unsuitable, with reasons: and must provide three alternative days which would be suitable within the next 21 days. The Complaints Sub-Committee will fix one of these days and notify all parties as provided for herein. The witnesses should not be provided with any information other than that a complaint has been received at the instance of the named complainer or complainers against the named Member or Members complained of, stating the time, date and place of the alleged event, and calling them as witnesses.

7. Hearing before Complaints Sub-Committee

At the Hearing the Complaints Sub-Committee will firstly hear the Complainer or Complainers and any witnesses that appear to be supportive of the Complainer's averments, and then the Complainer and any witnesses that appear to be supportive of the Member complained of. The Hearing may be tape-recorded and a full transcript taken, failing which detailed notes will be required to be taken and preserved as to all salient points of evidence and procedure. The Member complained of is entitled to be present throughout the hearing itself. Any Member of the Complaints Sub-Committee may ask any question that he or she deems appropriate of any party appearing before the Hearing. The Member complained of may, once the Complaints Sub-Committee has concluded its initial questioning of any party appearing before it, cross-examine that party: and the Complaints Sub-Committee may then ask any final questions of that party for clarification purposes. At the conclusion of hearing all evidence the Complaints Sub-Committee may take the matter to *avizandum* (i.e. decide not to make a decision at the moment) but must reach its conclusion within five days thereafter and within that period should make its findings and decision known in writing to the Complainer, the Member complained of, and the Management Committee in writing.

8. Powers of Complaints Sub-Committee

The Complaints Sub-Committee shall have the following powers: to dismiss the complaint on the grounds that it is not proven, or that there is no case to answer or that it is too trivial to warrant action: these may be referred to as the "innocent or not proven" decisions. The following may be referred to as the "proven or guilty decisions". The Complaints Sub-Committee may admonish any party appearing before it, including (for avoidance of doubt) the Complainer or any of the witnesses. The Complaints Sub-Committee may suspend any party appearing before it for a period not exceeding one year. If suspended, the party so suspended shall be disbarred from the Club's premises and use and enjoyment of the Club's facilities for the period of the suspension, and shall be obliged to remove all his property then at the Club, including but not restricted to boat, trailer, and, if required by the Management Committee, mooring. The Complaints Sub-Committee may impose any other finding as it sees fit, without prejudice to the foregoing generality, it may impose a "community service" type of penalty, and it may impose a suspended penalty (suspended penalties shall expire at the Complaints Sub-Committee's determination for up to five years). The Complaints Sub-Committee may terminate the Membership of any party appearing before it forthwith. The Complaints Sub-Committee shall be empowered, but not obliged, to publish its findings in the Mainsheet (or Newsletter).

9. Appeal

Any Member who has received a proven or guilty decision shall have a right of appeal. Such right of appeal must be notified in writing to the Secretary within not more than 14 days from the Judgment, and shall be required to state a note of the basis of appeal, and any disciplinary measures taken against the Member shall be held in abeyance until the outcome of the appeal. On receipt of a note of appeal the Secretary should forthwith convene a meeting of the Management Committee and the Management Committee will require to convene an Extraordinary General Meeting of the Club within 30 days of the date of the note of appeal being received by the Secretary. The Notice of EGM will require to be dispatched to all Club Members in terms of the provisions of the Constitution. The Notice to Members will require to contain a copy of the Complaints Sub-Committee's written findings, and a copy of the Member's note of basis of appeal.

10. Extraordinary General Meeting to hear Appeal

The EGM called for the purposes of the appeal will require to be convened in accordance with the provisions of the Constitution. The following Members will be disbarred from voting at the Extraordinary General Meeting, though any of them may speak: the Investigating Officer and the members of the Complaints Sub-Committee. Any of the foregoing individuals shall however be entitled to summarise their views following the conclusion of any debate, and the Member complained of may thereafter sum up on his own behalf immediately prior to the Chair of the meeting summarising and putting the matter to a vote. The simple vote of the Extraordinary General Meeting shall be final.

11. Miscellaneous matters**Right of representation.**

11.1. Any Member complained of may be represented by another Member of the Club if he so chooses. For avoidance of doubt, all meetings of the Club, meetings of the Management

Committee or of any Sub-Committee are all closed meetings of the Club, and no Member shall have the right of external representation. Any Member complained of who seeks representation by another Member must notify the Club of his appointment of (and confirming acceptance of appointment by) such Member, in writing not less than two days prior to any meeting in terms of these proceedings. Any such representative shall present the Members case instead of, not in addition to, the Member complained of, except only that the Member complained of may be examined and cross-examined as a witness on his or her own behalf.

Contract between individual Members and the Club

- 11.2. It is a matter of Law that Membership of the Club represents a contract between each individual Member, and the Club. It shall be a fundamental provision of this contract that both the Club and each individual Member shall prorogue the jurisdiction of the Courts as evidenced (in part) by the Constitution, which regulates the Club and the relationship between individual members and the Club. The provisions of the Constitution shall regulate the whole affairs of the Club, including the relationship between individual Members, and the Club.

Separate Complaints

- 11.3. Should any further complaint be received against the Member complained of after commencement of matters under these procedures (commencement being deemed as to complaint first being tabled before the Management Committee), any such complaint shall be actioned as a separate complaint. Separate complaints should be reviewed by a Complaints Sub-Committee, and if any sanction or "conviction" is imposed on the Member complained of, then any such decision should be withheld from the Complaints Sub-Committee until it has reached its verdict: but may then be taken into account, should the verdict be a guilty one, in determining the penalty to be applied. For avoidance of doubt a series of convictions may together amount to a more serious penalty than would be applicable for the single matter under review. The minutes, notes and whole records of each complaints proceedings shall be preserved by the Secretary of the Club for a period of not less than five years from the conclusion of those proceedings.

Right to scrutinise ballot

- 11.4. Both any Complainer and any Member complained of shall have the right to be informed of the outcome of any vote or ballot in detail, and to scrutinise the voting process.

- 11.5. **Prosecution before the Courts**

Without prejudice to any matter referred to elsewhere in the Constitution or in these Procedures: if any member is convicted by the Courts of any crime or misdemeanour whatsoever, he may be summarily expelled from the Club by the Management Committee without proceeding to any investigation, or appointment of Investigating Officer or Complaints Sub-Committee: subject only that any such expulsion shall be suspended should the member appeal the Courts decision, until the outcome of that appeal. Should a Member be prosecuted before the courts and be found not guilty or the offences which he is accused be found not proven, or should he appeal any such verdict and succeed, nevertheless any complaint against him may yet require to be examined according to these procedures.