

# Ballyholme Yacht Club



## Disciplinary Rule 28 and Procedure

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## **1 Introduction**

1. This document sets out the Committees and persons in the Club authorised to consider a Rule 28 Reference, their constitution, the procedure to be followed, so far as practicable, and the sanctions which may be imposed.
2. This document is intended to provide Members with general guidance as to how the Club will conduct a Rule 28 Reference and the implications of a Rule 28 Reference for the Member.
3. It should be noted that this document is for guidance only. A Rule 28 Reference shall, so far as practicable, be made in accordance with the Rule 28 Policy and Procedure (this document) as approved and amended from time to time by the Executive Committee, but departures therefrom will not invalidate any Rule 28 Reference or any decision made pursuant to it.
4. The following principle definitions are deemed to apply to any Rule 28 Investigation and/or Rule 28 Reference:
  - a) “Rule 28 Reference” is the term used for referring a member to the disciplinary process defined in this document as a result of some alleged misbehaviour.
  - b) “Member” means every class of Club Member. This includes those Honorary Members colloquially referred to as “visitors”
  - c) “The Manager” means the Club's Manager and shall include, when he is unavailable, a nominated Club employee.
  - d) “The Investigator” shall be a voting member of the Club appointed by the Executive Committee. His role is to investigate the facts and hence prepare information for the Executive Committee. The Investigator shall be independent of the circumstances that are the subject of the Rule 28 Reference.
  - e) The “Hearing Secretary” may be a Club Member or a Club Employee. So far as possible, the Hearing Secretary should oversee the whole process through Investigation to Hearing and Appeal. He should be on hand to guide members, officials and employees, hence ensuring conformance to this Policy and Procedure.

f) "The Disciplinary Panel" shall consist of all available Members of the Executive Committee who have not been involved in the incident or the Investigation. Six members present shall form a quorum. In the event that sufficient uninvolved members of the Executive Committee are available, other Club Members may be co-opted.

g) "The Appeal Panel" shall consist of three Trustees or past Commodores of the Club.

## **2 The Rule**

Rule 28 of the Club reads:

a) A Member may be subject to disciplinary action if such a Member has:

i) Acted in breach of the Club Rules, or Bye-Laws

ii) Engaged in conduct whether inside or outside the Club that renders him unfit for Membership of the Club or brings his suitability for Membership of the Club into question.

b) The process of such disciplinary action is called a "Rule 28 Reference". A Rule 28 Reference will, so far as is practicable, be made in accordance with the "Rule 28 Policy and Procedure" as approved and amended from time to time by the Executive Committee and approved by the membership. The Rule 28 Policy and Procedure will set out guidelines for the procedure to be adopted in respect of Rule 28 References, but departures therefrom will not invalidate any Rule 28 Reference or any decision made pursuant to it.

c) In conformance with detailed guidance in the Rule 28 Policy and Procedure, a Rule 28 Reference shall initially be investigated by an uninvolved member of the Club to determine the facts; then considered by a disciplinary panel consisting of independent and uninvolved members of the Executive Committee. The right of appeal shall exist to an appeal panel consisting of three uninvolved Trustees or past Commodores. The outcome of an appeal is final.

d) A Rule 28 Reference may result in one or more of the following sanctions:

i) Advice as to the Member's future conduct.

ii) The Member being formally reprimanded in respect of the conduct in question.

iii) The Member being required to provide a written apology in terms as specified.

iv) Where appropriate, the imposition of a financial payment consistent with the Rule 28 Policy and Procedure.

v) The suspension or expulsion of the Member from the Club.

e) The Member subject of a Rule 28 Reference may be suspended from the Club pending the determination of that Rule 28 Reference.

f) A Member may be suspended from Membership with immediate effect where the persons effecting the suspension consider that the action is necessary and appropriate considering all the circumstances and the best interests of the Club. These persons shall make a Rule 28 Reference at the earliest reasonable opportunity afterwards

Such an immediate suspension may be effected by or in consultation with:

i) Two Elected Officers as defined in Rule 4; or

ii) An Elected Officer and the Club Manager; or

iii) if and only if it is impracticable to immediately contact an Elected Officer, the Manager alone. The Manager shall inform an Elected Officer of the action taken at the earliest reasonable opportunity.

### **3 When the Rule will be invoked**

1. A range of situations might arise, regarding a Member's conduct, which may need to be dealt with pursuant to Rule 28. The following are diverse examples of circumstances, listed here for illustrative purpose. This list is not intended to be complete nor comprehensive; any incident will be considered against the Rule itself.

a) A breach by the Member of the Club Rules or Bye-Laws.

b) Serious lapses in behaviour: for example serious rudeness to fellow Members or to employees, behaviour toward fellow

competitors or to officials during an event held under the Club Burgee.

c) Serious lapses in conduct.

d) Failing to honour cheques.

e) Withdrawing Direct Debit or Standing Order payments due.

f) Giving false information to the Club.

g) Affray.

h) Where the Member has been engaged in conduct whether inside or outside the Club, which renders him unfit for Membership of the Club or brings his suitability for Membership of the Club into question.

#### **4 Overall Process**

1. Immediate Action (section 5 of this document) in which immediate action may be taken to suspend the Member and if required remove him from the Club premises for the safety and security of others and/or property.

2. Initial Investigation and Determination (section 6 of this document): in which

a) written reports from the parties and witnesses to the Rule 28 Reference are gathered.

b) it is determined whether there is the basis of a case to answer. In the absence of appropriate evidence, the process will lead to Closure at this point.

3. Preparation for the Hearing (section 7 of this document).

4. The Hearing (section 8 of this document). The process will lead to Closure at this point when there is no Appeal.

5. The Appeal (section 9 of this document). The Appeal is final leading to Closure.

6. Closure (section 10 of this document).

7. At any stage in the Overall Process, a failure by any Member, without reasonable cause, to assist or to co-operate in such an investigation, when so requested by the Commodore of the Club and/or the Investigator (see Section 6) and/or the Manager may itself be the subject of a Rule 28 Reference.

## **5 Immediate Action**

1. This subsection describes the Policy in the event that a matter arises demanding immediate action.

2. A member may be immediately suspended and removed from club premises for the safety and security of others and/or property having regard to the alleged conduct and the best interests of the Club.

3. A Member may be suspended from Membership with immediate effect where the persons effecting the suspension consider that the action is necessary and appropriate considering all the circumstances and the best interests of the Club. These persons shall make a Rule 28 Reference at the earliest reasonable opportunity afterwards. Such an immediate suspension may be effected by or in consultation with:

a) two Elected Officers; or

b) An Elected Officer and the Club Manager; or

c) If and only if it is impracticable to immediately contact an Elected Officer, the Manager alone. The Manager shall inform an Elected Officer of the action taken at the earliest reasonable opportunity.

4. The parties who instigated the suspension will raise a Rule 28 Reference at the earliest reasonable opportunity.

## **6 Initial Investigation and Determination**

1. A Hearing Secretary will be appointed. The Hearing Secretary may be a Club Member or a Club Employee. So far as possible, the Hearing Secretary should oversee the whole process through Investigation to Hearing and Appeal. In choosing an appropriate Secretary, consideration should be given to choosing a person with some knowledge and experience of the Rule 32 Policy and Procedure and the Club Rules in general.
2. The Initial Investigation will:
  - a) Be coordinated by a Member appointed by the Executive Committee. This person shall be known as "The Investigator". The Investigator shall be independent of the circumstances that are the subject of the Rule 28 Reference.
  - b) Be conducted with maximum confidentiality consistent with completing the Investigation.
  - c) Not be conducted by any of those persons who brought the Rule 28 Reference.
  - d) Not be conducted by anyone who subsequently is to be a member of either the Disciplinary Panel or the Appeal Panel.
3. Each allegation that might give rise to a Rule 28 Reference will be investigated thoroughly and as soon as possible. Statements of what has occurred will be obtained in writing.
4. The Member's past conduct, both positive and negative, will not be admissible, even as background information to the Initial Investigation and Determination, though it may be admissible when considering any Sanction (See Sections 8 and/or 9).
5. As part of the Investigation, the Member concerned will then be invited to meet the Investigator at a mutually agreed date and time to give his version of events and an explanation. The Member may be accompanied to the meeting by a maximum of one person. A written record of the meeting will be made and forwarded to the Member, for agreement.
6. If the Member fails to attend the meeting and fails to give reasonable reason for so doing, the Investigation may proceed in the absence of the Member.

7. Having carefully considered all the facts, a decision (“the preliminary determination”) will be made by the Commodore, in consultation with The Investigator and the Flag Officers that:

a) The matter is considered to be very serious. In this case the Member may be suspended until the final disposal of the Rule 28 Reference, although the Disciplinary Panel appointed to hear the Rule 28 Reference may revoke such suspension at any time.

b) There is sufficient evidence and the matter is sufficiently serious for the matter to be dealt with pursuant to Rule 28: The allegations will be identified and notified to the Member in writing giving full particulars, together with a selection of possible dates for the hearing of the Rule 32 Reference by the Disciplinary Panel.

c) The matter is considered to be a valid complaint but does not warrant a Rule 28 Reference, the Member may be sent a letter of warning that any future misconduct may be dealt with pursuant to Rule 28. (Closure).

d) Failing these criteria, the matter will be taken no further and all parties informed in writing accordingly. (Closure).

8. The preliminary determination is not a decision on the merits and no preliminary determination will influence the Disciplinary Panel hearing the Rule 28 Reference.

## **7 Preparation for the Hearing**

1. All reasonable efforts will be made to fix a date convenient for the Member for the hearing, which should take place within a reasonable period of time. Every effort will be made to ensure that the Member is able to attend and that a hearing will only take place in the absence of the Member, either at his request, or where the Disciplinary Panel decides it is fair and reasonable in all the circumstances to proceed with the hearing in his absence. It should be noted that a failure to attend a Rule 28 Reference may be taken into account by the Disciplinary Panel appointed to hear the Reference in assessing the weight to be attached to the evidence before it.

2. A Disciplinary Panel will be convened. It shall consist of all available Members of the Executive Committee who have not been involved in the incident or the Investigation. Six members present shall form a quorum. In the event that sufficient uninvolved members of the Executive Committee are available, other Club Members, who have not

been involved in the matter so far, may be co-opted to make up a quorum. It will not include any Trustee as their role is in the Appeal process.

3. The Member shall be encouraged to submit a written statement to be considered by the Disciplinary Panel. The Member shall be reminded that this should include all the facts that the Member wishes to present to the Disciplinary Panel for consideration including background information

4. The Member may bring an advisor to the hearing of the Rule 28 Reference and is positively encouraged so to do in serious cases where prolonged suspension or expulsion are possible sanctions in the event that the allegations are upheld. If the Member wishes so to do, the Honorary Secretary or the Investigator must be so informed at least seven days before the hearing.

5. Once the date of the meeting has been agreed, the Honorary Secretary will send to the Members of the Disciplinary Panel and to the Member concerned, the allegations and all supporting documentation, together with a copy of the Rule 28 Policy and Procedure.

6. After receiving the papers circulated to the Disciplinary Panel the Member concerned may submit a second written statement that will be accepted and circulated to the Disciplinary Panel.

7. The Honorary Secretary will ask the Member if witnesses are to be called on behalf of the Member at the hearing of the Rule 28 Reference.

8. Where witnesses are to attend the Rule 28 hearing, whether on behalf of the Club or the Member, the outline of the evidence to be given shall be in writing and shall be circulated to all parties prior to the Rule 28 hearing.

## **8 Conduct of the Hearing**

1. Roles: The following Roles are involved in the Hearing:

a) Disciplinary Panel. The Disciplinary Panel will consist of members as indicated at 7.2 above. The Disciplinary Panel will elect one of its Members as the Chairman hereinafter referred to as "the Chairman", who will chair the meeting.

b) The Hearing Secretary (hereinafter referred to as “the Secretary”). The Secretary will minute the meeting as a proper record that will be filed in a confidential minute book. The Secretary may be a Club Member or Club employee. The Secretary is advised to familiarise himself with the papers prior to the meeting.

c) The Member against whom there is a Rule 28 Reference.

d) The Member’s advisor.

e) The Club Spokesperson. He will present the matter on behalf of the Club, but otherwise take no part in the deliberations other than to advise, if asked, on matters of procedure or Club Rules.

f) The witnesses called by the Club and the Member.

2. Standard of Proof: In reaching its decision as to whether or not the Member is guilty of the alleged conduct, the Disciplinary Panel will adopt and apply the standard of proof required in a civil case i.e. that on the balance of probabilities; it is more likely than not that the Member is guilty.

The Disciplinary Panel will not adopt and apply the standard of proof required in a criminal case i.e. sure beyond reasonable doubt.

3. Right of Appeal: The Member concerned has a right of appeal:

a) Against the determination of guilt, only if new evidence comes to light.

b) Against sanctions of:

i) financial penalty of more than the annual subscription for a Full Member;

ii) suspension;

iii) expulsion.

There will be no right of appeal against lesser sanctions.

4. Procedure: The procedure will be broadly as follows:

a) The Chairman will ensure that the procedure at the hearing is fair.

- b) The Club Spokesperson will present the Rule 28 Reference on behalf of the Club.
- c) The Secretary may be asked questions relating to the papers that have been circulated, matters of procedure, or questions relating to past cases. The Secretary must not take part in the conduct of the hearing or the decision making process.
- d) At the beginning of the hearing the Chairman will remind the Members of the Disciplinary Panel of the absolute need for Confidentiality and as to the correct procedure to be followed. The Chairman should check that all concerned have received all the correct documentation. Members of the Panel may ask the Club Spokesperson questions relating to the meaning and effect of the Rules, Bye-laws or Regulations of the Club, the Policy and Procedure Rules, or as to the Disciplinary Panel's powers but the same will be asked and the advice given in the presence of the Member subject to the Rule 28 Reference.
- e) Once the Disciplinary Panel is ready to proceed, the Chairman of the Disciplinary Panel will ask for the Member concerned to be brought to the meeting. On his arrival the Chairman will introduce himself to the Member and introduce the Member to the Disciplinary Panel and to the Secretary.
- f) If at any point in the proceedings outlined in the following paragraphs, material new evidence is tabled, the Chairman may, with the agreement of the Disciplinary Panel, suspend/adjourn the meeting to allow consideration of such evidence.
- g) The Chairman will outline to the Member the procedure for conduct of the meeting and will ask the Member if he has received all the relevant documentation. The Chairman will ask the Member whether or not he admits all or any of the allegations made against him.
- h) The Club Spokesperson will then open the case for the Club and call any witnesses for the Club, if necessary, to give evidence. Such witnesses shall be asked questions firstly by the Club Spokesperson, thereafter by the Member, then, if necessary, by the Club Spokesperson in re-examination and finally by Members of the Disciplinary Panel.
- i) The Chairman will then ask the Member whether he wishes to give evidence and call any witnesses.

j) The Chairman will then ask the Club Spokesperson and Members of the Disciplinary Panel if they have any questions for the Member and/or the witness(es).

k) The Chairman will then ask the Member if he has any further questions.

l) Thereafter the Member and / or his advisor (if any) may address the Disciplinary Panel.

m) The Chairman will then inform the Member that the Disciplinary Panel will then proceed to consider all the evidence and make a determination on the facts and any consequential order thereafter arising. Such determination and any consequential order will be communicated in writing save that the decision may be communicated orally to the Member at the Club immediately following the Disciplinary Panel's deliberations and thereafter will be confirmed in writing. The Chairman may choose to give the Member the opportunity to telephone the Honorary Secretary the next day to learn of the Disciplinary Panel's decision if it is felt to be appropriate.

n) When the Member has left the meeting the Disciplinary Panel will then proceed to consider all the evidence. The Disciplinary Panel must arrive at three separate determinations:

i) Firstly, the Disciplinary Panel must decide whether the alleged conduct, if proved, is capable of amounting to a breach of a Club Rule or Bye-Law or is of such a nature whether occurring inside or outside the Club which renders the Member unfit for Membership of the Club or brings his suitability for Membership into question. This requires only a simple majority.

ii) Secondly, the Disciplinary Panel must decide whether it is satisfied that the Member is guilty of the alleged conduct. A formal vote must be taken and recorded. This requires only a simple majority.

iii) Thirdly, if the Disciplinary Panel is satisfied that the Member is guilty and only if, they are so satisfied then the Disciplinary Panel will proceed to consider and decide upon the appropriate sanction. If the Disciplinary Panel decides to suspend the Member, this requires only a simple majority. Any decision as to the length

of the period of suspension will also require only a simple majority.

If the Disciplinary Panel decides to expel the Member there must be a majority of at least four to one.

5. Partial Guilt: If the Member is found to be guilty of part only of the alleged conduct(s) then the Disciplinary Panel must consider whether the conduct still amounts to a breach justifying a Rule 28 Reference. If the breach does not justify a Rule 28 Reference, then the Disciplinary Panel should consider whether Closure could be achieved by sending the Member a letter of warning that any future misconduct may be dealt with pursuant to Rule 28.

6. Other consideration regarding Penalty: When deciding on a suitable penalty, regard will be had to all the circumstances, including any mitigation, the age of the offender, his years of Membership, any previous history of unacceptable behaviour and the doctrine of proportionality, whereby any penalty must be proportionate to the allegations found proved.

7. Obligations to State Reasons: The Disciplinary Panel will give reasons for all decisions, whether on the facts and/or as to any consequential order.

8. Sanctions: Documentation regarding the history of the Member's conduct at the Club shall be admissible for the first time at this stage of the process. On request from the Disciplinary Panel, the Honorary Secretary shall provide any such documentation that may exist. The Disciplinary Panel may on any Rule 28 Reference dismiss the Rule 28 Reference or impose one or more of the sanctions following. In determining the sanction, the Panel may take into consideration past behaviour of the Member.

a) advise the Member as to his future conduct but otherwise take no further other action.

b) require the Member to provide a written apology in such terms as the Disciplinary Panel shall think fit.

c) reprimand the Member in such terms and in such manner as the Disciplinary Panel shall think fit.

d) impose a financial penalty, where appropriate, either to compensate the Club for such loss to the Club as is considered to have been suffered by it by reason of the circumstances giving rise to the Rule 28 Reference and/or to reflect such reasonable and

proper administration costs incurred or to be incurred by the Club in connection with the Rule 28 Reference.

e) impose conditions as to the time, manner and method of, and the consequences of the failure to effect, payment of the financial penalty referred to in (d) above.

f) suspend the Member from the Club for such period as it thinks fit with or without conditions to be fulfilled upon the expiration of the period suspension.

g) expel the Member from the Membership of the Club.

9. Closure: The Disciplinary Panel will decide the method by which its decision will be conveyed

a) to the Member concerned; and

b) to the Membership as a whole.  
See section 10 of this document - Closure.

10. Follow-up Action: Where a decision has been made to suspend a Member subject to satisfying conditions, the Disciplinary Panel (which may or may not be constituted as originally) will thereafter convene to determine whether the conditions imposed have been fulfilled to its satisfaction. If, having given the Member an opportunity to make representations, the Disciplinary Panel is not satisfied that the conditions have been fulfilled, the Disciplinary Panel may:

a) continue the suspension for a period not exceeding three months and will, again, after the expiration of the said period convene for consideration as to whether the conditions have been satisfied; or

b) if it is of the opinion that the Member's failure to comply with any condition imposed is deliberate, forthwith expel the Member from the Club.

## **9 Appeals**

1. The Appeal Panel will normally only reconsider a case:

a) if new evidence is brought forward; or

b) if the Appeal is against the sanction: or

c) if procedures have been breached in a prejudicial way.

2. The hearing by the Appeal Panel will in the first instance be considered in writing. The Appeal Panel may call for an oral hearing. In the event of an oral hearing, that hearing will be conducted generally in accordance with the principles and procedures laid out in this document for Preparation for a Hearing (Section 7) and Conduct of a Hearing (Section 8).

3. Any appeal must be notified to the Honorary Secretary in writing within a period of not more than 14 days after the written confirmation of the decision of the Disciplinary Panel. Any appeal may be made in respect of the finding as to the Member's guilt, or as to the sanction imposed, or both. The Member shall at the time of notifying the Honorary Secretary of the decision to appeal set out in writing his grounds of appeal. The Club Spokesperson may draft a written submission in response thereto for the consideration by the Appeal Panel.

4. The Appeal Panel may upon hearing an appeal from the Disciplinary Panel:

a) dismiss the appeal;

b) allow the appeal;

c) allow the appeal to the extent only of reducing the sanction imposed.

## **10 Closure**

1. The Member shall be informed by letter, sent by Recorded Delivery, normally within 7 days, setting out the determination on the facts and any consequential order thereafter arising.

2. The Membership at large shall be informed by a notice stating the conduct for which the Member has been disciplined (but not normally mentioning the Member's name) posted on the Notice-board, after (i) the period allowed for any appeal has expired or (ii) in the event of any appeal, the determination thereof.

## **PROFORMA**

This proforma will be a checklist to guide the member, the Investigator and the panels through the Rule 32 process.

A protest form model should be considered as a template for this proforma.