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## **BUSA ADVICE NOTE**

### **TEAM RACING: INSURANCE, DAMAGE DEPOSITS AND CHARTERING**

BUSA has received an increasing number of complaints about damage to borrowed boats at events (and the resulting damage deposit loss). Except for the BUCS Team Racing Championships itself, BUSA has no role in disputes and will not arbitrate between its members.

This advice note is intended to help universities understand the risks and issues with running an event with chartered boats. .

#### **Chartering**

Before organising an event, you must be clear about the basis on which any chartered boats are being chartered. There is no default BUSA or RYA system that operates in the background - there is only the contract you have with the organization that owns the boats (the charter) and the provisions of the Notice of Race that govern the use of the damage deposit.

There is a draft charter agreement available from the RYA together with accompanying advice that, although aimed at yacht charters, contains appropriate provisions that could be adapted by a club in relation to its dinghies. BUSA Member Clubs are members of the RYA through their affiliation to BUSA, so to access this agreement please contact the BUSA Secretary.

If you do not have a written agreement, then experience shows you will find it very hard to resolve any post-event disputes amicably.

#### **Insurance**

If you are chartering boats for your event then you must also be clear about whether or not the boats are insured for the event by the boat owner or whether you must insure them yourself. Do not assume the owner has insured them - another university's insurance policy may only cover their boats for use by that university or at a particular venue. You also need to check whether they are insured for third party liability or fully comprehensive and, if the latter, what is the policy excess. Always check before the event.

If the boats are uninsured (or only insured for third party liability) then the chartering club may be liable to compensate the boat owner for any damage caused to the boat. Even if the boats are comprehensively insured, the chartering club may be liable for any damage caused to the boats to the extent that it falls below the policy excess. In the absence of some form of contractual agreement, the chartering club would only be able to pass the cost on to a competing team if it can be shown that the damage was caused by that team's negligence, which can be difficult.

#### **Damage deposits**

One way of helping the organising club to recover the cost of any uninsured damage from the boat users is to provide in the Notice of Race (which is a contractual agreement with teams) that the teams will be liable for the cost of repairing any uninsured damage, however caused, and that a damage deposit will be taken from each team to cover this.

The standard Notice of Race provides that a team provides a damage deposit of £300 (or another suitable figure) but it is stated that this is the limit of what you can ask a team to pay for any one incident. You must be clear in the NOR about the circumstances in which money

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may be deducted from a damage deposit. You must also then ensure that any damage over and above this limit is covered by an insurance policy.

Do not assume that the level of the damage deposit provided for in the NOR is automatically the same as an insurance excess. You must check the insurance policy.

The use of the damage deposit is governed by the NOR. The organising club is contractually bound to hold the damage deposit and only use it in the circumstances set out in the NOR. Use the current UKTRA standard NOR to help with your drafting - do not simply re-use last year's document. This can be found by either contacting the BUSA Administrator or BUSA Team Race Officer.

If you deduct money from the damage deposit otherwise than as permitted by the NOR, then you will likely be in breach of contract to the relevant team. You must be able to justify the amount deducted if challenged so, wherever possible, agree the amount with the team before they leave the venue and always ask the umpires as soon as possible after a damage incident if they can apportion responsibility.

### **Recovery of damage outside the damage deposit (including wear and tear)**

Outside the permitted use of a damage deposit, if it is not covered by an insurance policy, then a club would normally only be able to recover the cost of damage that it could prove was caused by the negligence of the users of the boats.

It is inevitable that the boats will suffer from some wear and tear without anyone necessarily being at fault and a club needs to factor that into its calculations when deciding how much to charge for the use of its boats. Wear and tear is therefore part of the charter fee and the club should not simply invoice the users for the damage after the event and expect them to pay.