



**From the National Court**

**MOTOR SPORTS COUNCIL NATIONAL COURT  
SITTING TUESDAY 12 NOVEMBER 2019**

**Nicky Moffitt  
Chris Mount  
David Munro (Chairman)**

**J2019/30 – 5Club MX5 Cup**

The National Court, sitting on 12<sup>th</sup> November 2019, conducted an inquiry pursuant to GR C9.1 in relation to the judicial processes conducted by Officials of a Race meeting at Brands Hatch on 17<sup>th</sup> August 2019, following an on-track incident which occurred during Race 2, a 5Club MX5 Cup race.

The matter was referred to the National Court by Motorsport UK in order to consider the following:

1. Conformity with judicial processes by the Officials of the meeting, including but not exclusively the next following matters:
2. The veracity within the Motorsport UK General Regulations of a single on-track incident being dealt with by one Clerk of the Course under generic authority (C2.1) AND subsequently by a second Clerk under the General Provisions of GR5.1 et seq.
3. Such other matters as may arise by virtue of the evidence received.

The on-track incident which gave rise to the judicial processes in question took place on the approach to Druids Corner on Lap 2 of the Race. The leading car, No. 42, driven by Paul Bateman was struck by the following car, No. 40, driven by Ben Hancy. The race had finished at 11.25am.

The incident was subsequently dealt with by the Clerk of the Course, Richard Beard, who investigated the matter and who, after seeing in-car camera recording and hearing from both competitors, found that Mr Hancy had contravened GR C1.1.5 by driving in a manner incompatible with general safety and/or departing from the standard of a reasonably competent driver, and had also breached GR Q14.4.4 by “causing a collision, repetition of serious mistakes, appearance of lack of control. Avoidable contact with car 42”.

The penalty imposed by the Clerk of the Course under GR G5.3 was a reprimand which carried a mandatory 2 penalty points.

It should be noted that a senior Clerk of the Course, Bernard Cottrell, had also seen the in-car footage prior to Mr Beard’s decision being announced.

This decision was issued at 11.53am and was received by Mr Hancy at 11.56am. Until this juncture, matters were unexceptional.

What happened thereafter was rather less clear cut. It seems that Mr Bateman was aggrieved by the fact that he regarded the penalty as far too lenient. He completed a Protest/Appeal Form and paid an Appeal/Protest fee of £130. This was timed at 12.22pm.

Mr Cottrell treated the document as a protest against another competitor under GR C5.1 and considered that, due to the intensive race timetable, that it was physically impossible for Mr Bateman to have lodged the Protest within the required time of 30 minutes from the end of the race. Accordingly, the time limit was extended under GR C5.2.3 and the Protest was heard at 12.40pm.

Mr Cottrell heard from both drivers and viewed the camera footage from car 40. His narrative decision was that:

“car 40 caused unnecessary contact with 42 causing 42 to spin and retire from the race. Car 40 is disqualified from the results – the Protest is upheld. The fee returned.” This decision was made at 12.50 pm. It was issued at 12.57pm. The decision from states:

“C1.1.5 – Driving in a manner incompatible with general safety and/or departing from the standard of a reasonably competent driver

Q14.4.4 – Causing a collision, repetition of serious mistakes, appearance of lack of control. Contact with Car #42 causing 42 to spin and retire from the race.”

He imposed a penalty of disqualification from the race which carried a mandatory 4 points.

It is significant that the wording of the decision form largely repeats the text of the earlier form issued by Mr Beard at 11.53am. It indicates that the findings were substantially the same and that the same matters were considered. The only material difference was the increased penalty.

Mr Hancy then entered an Appeal to the Stewards of the meeting. He did so at 1.16pm. The hearing opened at 1.35pm and the decision was given at 1.50pm. The Stewards did not hear from Mr Bateman, they heard evidence from Mr Hancy and viewed video evidence.

Their decision did little to clarify an already confused situation. It merely states “It was decided that the Clerk of the Course was right to penalise Ben Hancy”. It did not address the obvious questions, such as:

“Which decision?”

“Which penalty?”

“Which Clerk?”

“Why have two Clerks considered the same incident and then reached different conclusions as to the appropriate penalty?”

Thereafter, Mr Hancy indicated that he wished to Appeal this decision to the National Court, but no Appeal was ever actually lodged.

This confusion left Mr Hancy with a total of 6 penalty points endorsed on his Licence.

The Court heard evidence from both Mr Hancy and Mr Cottrell. Written submissions had been received by Mr Bateman. It appears plain that the judicial processes at the meeting on 17<sup>th</sup> August were incorrectly conducted. Two Clerks considered the same incident and, whilst both ascribed blame to Mr Hancy (and did so in almost identical terms), each Clerk took a different view of the penalty that was to be imposed. This situation creates the spectre of double jeopardy. The competitor was dealt with once and was penalised. His aggrieved co-competitor appeared to enter a protest following this decision and this was accepted by Mr Cottrell, who observed when giving evidence to the Court that he had accepted it because every competitor has an absolute right to protest another competitor.

Whilst this statement is correct (subject to the limitations imposed by GR C5.1 – GR C5.2) it was necessary for the Court to consider whether or not the Appeal/Protest Form that was submitted by Mr Bateman contained a protest about “an act or omission of another competitor” as required by GR C5.1.

The Form does not state whether it was intended to contain an Appeal or a Protest. The redundant part of the heading was not deleted and hinted at the ambiguity which was contained in the purported grounds of the Protest, which was set out in paragraph 2 of the narrative in the document.

In paragraph 2, Mr Bateman stated:

“I am protesting the driver Ben Hancy for deliberate, avoidable contact in the braking area on the inside line at Druids...he was not anywhere near alongside and footage shows contact with my rear o/s corner and the evidence is on my car.

He has been penalised too leniently with regard to the results.”

The Court has given careful consideration to the nature of Mr Bateman’s complaint. Given that, by the time he wrote this text, he was aware that the Clerk, Mr Beard, had already found that Mr Hancy was to blame for causing a collision and had departed from the standard of a reasonably competent driver, this was surely not the real reason for his complaint. What he was aggrieved about was the penalty that had been imposed.

He says so – “He has been penalised too leniently”.

What precedes this statement in his narrative is, in reality, an explanation of why he considered the penalty of a reprimand to be too lenient.

The Court concludes that it would be patently incorrect to allow a competitor to Protest the decision of a Clerk of the Course under GR C5.1. The correct procedure is plainly for a competitor who is a party to judicial proceedings and who is aggrieved by the decision of a Clerk of the Course to Appeal to the Stewards of the meeting, in accordance with GR C6.1.

This was the course of action that was open to Mr Bateman following Mr Beard's decision. Had this been followed, the confusion that ensued from acceptance of the form as a Protest should not have occurred.

The Court, therefore, considers that the judicial procedures were correctly followed until the point at which Mr Bateman's form was accepted as a Protest. Thereafter, the procedure was fatally flawed and the decisions that flowed from that decision cannot stand.

Mr Cottrell's decision amounted to an increase in the penalty imposed by Mr Beard and resulted in Mr Hancy's Appeal to the Stewards. The decision can be of no effect as it was based on an implicit acceptance that there was a valid ruling to be Appealed against.

If the judicial procedures that occurred following Mr Beard's decision are of no effect, then his decision must now stand. Accordingly, the Court, having viewed the in-car footage, concludes that this decision was, in any event, correct.

Mr Hancy breached GR C1.1.5 by driving in a manner incompatible with general safety and was also in breach of GR Q14.4.4, in that he caused a collision due to avoidable contact with car 42.

The appropriate penalty was that which was originally imposed. A formal reprimand is sufficient to mark the nature of the breach. For the avoidance of doubt, Mr Hancy's Competition Licence should remain endorsed with two penalty points.

As he had pursued an Appeal to the Stewards following the purported increase in the penalty it must follow that his Appeal Fee of £260 should be refunded.

The Court makes no other orders.

**David Munro**  
**Chairman**  
**12<sup>th</sup> November 2019**