



East Cowes Sailing Club

East Cowes Sailing Club Operational Policy and Contractual Conditions for:-

- 1) The allocation and tenure of storage and mooring rights, (both annual and winter only periods).**
- 2) The Management of Debts (money owing to the Club).**

Introduction.

This document outlines the operational policy of East Cowes Sailing Club (hereafter the **Club**), as an entity administered by the elected General Committee; in relation to all items of property stored, temporarily lodged or abandoned on Club premises and includes moored craft occupying Club moorings or craft stored ashore. The content is based on Legal Guidance from the Royal Yachting Association (RYA).

Working definitions.

For the avoidance of doubt / ambiguity, the range of **property** referred to below includes;- lockers, outboard motors, trailers and cradles of all types; unattended / neglected or otherwise abandoned craft / cradles or trailers stored ashore or in the case of craft, left afloat on a Club mooring; any craft which are deemed to be in a state of disrepair; craft and / or trailers or cradles parked in the wrong place; items of personal property, craft and/or trailers or cradles that remain uncollected by the owner on expiry of the storage term. For example, if the owner does not renew their membership or is expelled from the club; or the unauthorized storage of property, that has changed ownership whereby the new owner is not a member of the club.

The terms **property** or **goods** may be used interchangeably and refer to the same.

Throughout, the word **craft**, may refer to any sailing dinghy, tender, day boat, kayak, motor boat or larger sailing boats, whether stored ashore or afloat on a Club mooring.

Throughout, **storage** may refer to, personal lockers, outboard motors, maintenance / repair materials and tools left unattended on Club premises, trailers, cradles or any craft ashore on Club premises i.e. all **goods** or **property** as described above.

Authorized storage will be signified by a current **storage or mooring sticker**, which must be attached to the property in question. All other unattended property left on Club premises, **MUST** be identifiable by the owner's name.

Club **moorings**, includes all buoyed mud berths, all pile berths, all pontoon and finger berths and the main pontoon hammerhead, i.e. all berths allocated and administered by the Club regardless of type or location.

The **Clubs premises**, includes, the East Cowes Esplanade Boat Park and the main site off Clarence Road at East Cowes.

A **lien** a right for a creditor (the Club) in possession of a debtor's moveable property to use that property as security for an unpaid debt, such as where monies are owed to a club for storage/mooring of a craft, or unpaid membership fees.

The following should also be read and complied with, (in conjunction with this Operational Policy), the **Clubs Rules, Bye-Laws and any signed agreement for storage and / or mooring rights**.

Policy Conditions

1) Eligibility for authorized storage and allocation of Club moorings.

1.1 The allocation of storage space and moorings takes place annually and on the basis of a **written application to the Rear Commodore Stores**, who alone has delegated responsibility for the allocation and administration of storage and mooring rights.

1.2 All applicants must take personal responsibility for adhering to the application process in a timely way.

1.3 The application must be on the **prescribed form issued by the Club, signed and received by the due date**. (The form may be downloaded from the Club Website – member's area). Forms will also be made available in the Centenary Room for collection.

1.4 All members requiring storage or a mooring must submit an application form regardless of whether they were allocated the same the previous season.

1.5 **Due dates for submission of completed forms;** winter storage of craft ashore, is the 30th of September; and for moorings and annual storage ashore the 31st of January.

1.6 Applications for storage and moorings will only be processed following **confirmation of Club membership**, fully paid for the year for which the application applies.

1.7 Confirmation that the owner holds appropriate insurance cover for their craft / other property. The Club will not indemnify the cost of salvage or loss of property or craft or damage to property or craft owned by a third party.

1.8 Following allocation of a mooring, the owner of the craft must agree to maintain mooring strops/lines/ropes etc. and fendering to an approved standard as prescribed by the Rear Commodore Stores and at their personal cost.

1.9 The owner must agree to attend their craft at intervals of no more than 6 weeks, and that the craft is maintained in a seaworthy state at all times, similarly, the owner must report any observations of damage / wear of the mooring tackle to the Rear Commodore Stores. Please note, gate entry data may be used to monitor attendance.

2) Priority for the allocation of Storage and Moorings will be given to the following.

2.1 Fully paid-up members i.e. members who have renewed their annual Subscription in full by the 1st. of January, (i.e. in a timely manner).

2.2 Members who have previously held storage and/or mooring rights during the preceding season and who are NOT in arrears of payment.

2.3 Members who have maintained their craft in a seaworthy state (craft on moorings) and similarly maintained their mooring ropes and fendering etc as appropriate.

2.4 Members who have kept their storage / craft ashore, in an orderly and un-neglected state.

2.5 Members who attend the Club regularly i.e. a minimum of monthly visits.

3) Power to remove, sell or dispose of craft / stored items.

In the case of abandoned or unauthorized mooring of a craft or neglected storage (i.e. craft and other property as defined above), the Committee may take action as specified below:-

3.1 Move the craft and/or trailer / cradle, to any part of the club premises without being liable for any loss or damage to the craft and/or trailer/cradle, howsoever caused.

3.2 Upon giving 1 months' notice, require the member or former member to collect / remove the specified stored items or craft and/or trailer/cradle,

from Club premises.

3.3 Upon giving three months' notice in writing by registered post to the member or former member at his/her last known address shown in the register of members, proceed to sell the boat and/or trailer/cradle or stored items and deduct any monies due to the Club (whether arrears of subscription or storage fees or otherwise).

3.4 If the stored property/craft and/or trailer/cradle is unsalable, (in the reasonable opinion of the Committee), after giving notice in writing as aforesaid; may dispose of the property /craft and/or trailer/cradle in any manner the Committee may think fit and redeem the cost of doing so together with any arrears as aforesaid to be considered as a debt owing to the club by the member or former member, from the proceeds.

3.5 The club reserves the right to charge storage and mooring fees until such time as the owner collects / removes the stored items/craft and/or trailer or until notice has been served under clause 3.2 and 3.3 above.

3.6 The Committee shall be entitled to treat any of the following as an abandoned or unauthorized storage;-

3.6.1 Any property, craft and/or trailer/cradle stored on Club premises and not displaying a current storage sticker and or owners name, as prescribed in the Club Rules and or Bye-laws.

3.6.2 Property, craft and/or trailer/cradle located otherwise than in its properly allocated space.

3.6.3 A craft and/or trailer that remains on Club premises for more than one month after any date advised by the Committee by which the craft and/or trailer/cradle must be removed to allow for maintenance works of Club premises or the end of the authorized storage period (where applicable).

3.6.4 Any property, craft and/or trailer/cradle which is the property of a member or former member which remains on club premises after any fees payable to the club by the member or former member (whether by way of arrears of subscription or storage fees, or other charges formally levied by the Club) are more than one month in arrears.

4) Special Conditions

4.1 Disposal of sale proceeds.

Provided that in each case proper evidence is available to show that all reasonable steps have been taken by the Committee to trace a member or former member and that when and if the stored item(s), craft and/or trailer is sold, the proceeds of sale (where these exceed the amount of any indebtedness by the member or former member to the club), shall be

placed in a bank deposit account and retained against the eventuality of a claim by the owner (whether they be the said member or former member) for a period of six years.

4.2 A Lien on property (see definition above).

In addition to the powers set out above to move, sell or dispose of **property** (as collectively defined above), the club shall have a lien over members' or former members' property stored on Club premises or moored on a Club mooring, in respect of all monies due to the club, whether in respect of arrears of storage fees or subscriptions or otherwise and shall be entitled to retain possession of the property until such time as all monies due to the club have been paid in full.

4.2.1 A person with a lien does not give the Club an automatic right to sell the goods. If a lien is contractual and has been expressly agreed between the parties, (i.e. a condition of storage and mooring allocation following a full application as specified above), the owner of the *goods* (see 5 below), shall allow the creditor (the Club),to sell the goods retained and offset from the proceeds of the sale the sums owed. If there is no express provision within the contract then the club shall only have an implied right to detain such boats until the outstanding sum is paid, and cannot dispose of them by sale.

5) Procedure to deal with abandoned and unauthorized craft and/or trailers under the Torts (Interference with Goods) Act 1977

Explanatory Notes.

1) The Act gives a **bailee of goods** (i.e. the Club in relation storage and moored craft), a right to impose an obligation to collect *goods* and a further right to sell the *goods*, even where the bailee has been unable to trace the owner of the goods, and recover some or all of the outstanding debt, provided that the procedure in the Act is followed.

2) The Act applies in the case of *goods* / boats and/or trailers left after the period for which the storage or mooring fees have been paid, has expired or after the member ceases to be a member.

3) Before selling the *goods* / boat and/or trailer, the Club must be reasonably satisfied that the assumed owner does actually own the *goods*, (stored items / craft and/or trailer). If it subsequently transpires that the assumed owner was not the owner, the true owner may be able to recover their property the purchaser (subsequent to sale by the Club), in turn may have a claim against the club. Therefore, The Club will make all necessary checks against all relevant registers and other corroborating sources, to confirm the rightful ownership of *goods*, using the following procedure.

5.1 The Club will send the member who is in default, (the owner of the *goods*) **written notice**, advising of the terms under which the agreement is based and terminated, or advise otherwise that the arrangements will be terminated in 28 days from the date of the notice and hence their obligation to collect the boat and/or trailer. The written notice will include:-

5.1.1 A description of the goods / details of the boat and/or trailer to be removed / collected and where situated.

5.1.2 The name and address of the club.

5.1.3 The details of any sum of money owing.

5.1.4 The time the notice is sent (e.g. membership and berthing fees due up to the date of the notice).

5.2 This notice may be delivered direct to the owner, left at his proper address or posted to it. The *proper address* in the case of an individual is his/her last known address, (e.g. the one shown on his membership or berthing application). N.B. This first notice may be referred to as a **Notice to Remove** (or a **Part I Notice**).

5.3 If the notice does not result in collection or otherwise resolution on the matter, the Club will send the owner a further notice setting out:-

5.3.1 The same information as in the Part 1 Notice.

5.3.2 Notice of the club's intention to sell the *goods* / boat and/or trailer if it remains uncollected, and the date of the intended sale.

5.3.4 This notice will be delivered by recorded delivery post or Registered Letter. This second notice is referred to as a **Notice of Intention to Sell** (or a **Part 2 Notice**).

5.3.4 It is permissible to combine the first and second notices.

5.4 The period between the issue of the **Part 2 Notice**, intention to sell and the date of intended sale must be reasonably sufficient for the owner to reclaim the *goods* / boat and/or trailer. If any money is owed to the club this period must be **at least three months**.

5.5 If the owner still does not collect the *goods* / boat and/or trailer by the date stated in the Notice of Intention to sell, the Club will take steps to sell the *goods* / boat and/or trailer. The club will give the proceeds of the sale to the owner, if he/she subsequently claims them, but is entitled to make deductions as described below.

1) Reasonable Steps to trace an owner

6.1 If the owner of the boat and/or trailer is not at the last known address, the club can still go ahead with a sale if the club has taken

reasonable steps to trace him/her and those steps have been unsuccessful, these may include:-

6.1.1 Sending each notice by recorded/registered post to the last known address of the person they believe to be the owner, as listed on the Club's register of members.

6.1.2 Attaching each notice to the *goods* / boat and/or trailer in a weather-tight envelope, in a prominent position.

6.1.3 Posting a notice on the club board soliciting information from the members as to the whereabouts of the owner.

6.1.4 Approaching any relevant *class association* and asking for their assistance.

6.1.5 Following up leads or information that may be forthcoming.

6.1.6 Placing an advertisement in the local newspaper.

2) The Sale of Goods / Boat and or Trailer.

7.1 The sale itself must be fairly conducted and the club is under an obligation to adopt the best method of sale reasonably available in the circumstances.

7.2 The Club may obtain and retain a written valuation prior to sale. The cost of the valuation will be considered as one of the costs of the sale and may be recouped from the sale proceeds.

7.3 The sale will be advertised reasonably widely, and a record of all advertising and details of the sale and any subsequent financial disbursements / transactions in relation to the disposal of the goods/ craft / trailer, for a period of six years.

7.4 From the sale proceeds the club is entitled to, after the deduction of legal costs, deduct:-

7.4.1 The costs of the sale (for example broker's commission, cleaning costs, valuation costs, facility fees etc).

7.4.2 The sum owed before the date on which notice was given.

Special Notes:-

1) The Club cannot normally make any charge for the boat park charges for the period between giving notice and sale.

2) The balance of the sale proceeds (if any) will be held for the owner. The proceeds of the sale will be deposited in a bank account and retained against the eventuality of a claim by the owner within a

period of six years for the net proceeds together with any accrued interest. Where the sale is by Court Order the proceeds are usually paid into Court.

3) If the club is in any doubt as to whether it is entitled to sell the boat and/or trailer, it can apply to the Court for an Order authorizing the sale (and to approve the method of sale proposed) and/or to determine the amount that is due. If this happens, the Court will retain the balance of the purchase price after the deductions have been made.

4) There are a number of special cases which may require specific legal advice, including:-

4.1 Property believed to belong to a minor.

- 4.2 Property believed to be subject to a Hire Purchase Agreement, (the actual owner may be the hire-purchase company).

4.3 Property abandoned by a person who has never been a member of the club.

5) **If the boat in question is registered on Part 1 of the Central Register of British Ships** then the purchaser is likely to want a Bill of Sale. The club will take care to ensure that it does not give any misleading warranties or declarations about title or encumbrances etc.

6) **A high value boat / other property such.** If the property in question is of a high value and the sale proceeds are likely to exceed by a large margin the outstanding debt owed to the club, in these circumstances the club will protect its interests by seeking to recover the debt by arresting the boat through the Admiralty Court and asking the Court to dispose of it.

(October 2014 Final Version Ref. RYA Legal Advice.)

END

