



**BRITISH PORTS
ASSOCIATION**

GUIDANCE FOR TRUST PORT BOARD MEMBERS



Guidance for Trust Port Board Members

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Section 1 - Introduction

1.1 This document has been prepared by the British Ports Association (BPA) for its members to help existing, new, and potential board members, and trust ports, understand what the role of Non-Executive Directors (NEDs) can and should entail in relation to good governance. Trust port board members can be described in several different ways, including being known as Commissioners or Trustees, however within this Guidance board member is used as a catchall term.

1.2 BPA guidance on this topic has been requested by a number of our port members due to gaps in their Board instructional resources and briefing materials. While there is plenty of general guidance for new board members, specific advice for trust port boards and associated NEDs is not common.

1.3 This Guidance is designed for all sizes and types of trust port. It is generic in nature and should be used to complement arrangements within ports that have existing board member guidance and expectation materials – it is not intended to replace such resources. It can be used to supplement and enhance performance, and be applied in parallel to other materials including government port governance advice such as: the Department for Transport's Ports Good Governance Guidance, Transport Scotland's Modern Trust Ports for Scotland: Guidance for Good Governance, board duties within individual Harbour Orders, as well as other trust port documents such as Board terms of reference.

1.4 In order to be effective as a member on the board of a trust port it is important that individuals understand the organisation, the role of a board member and how best to fulfil their responsibilities whilst acting within the principles of good governance. New members should be given training to acquaint them with the organisation they have joined and to build upon the knowledge they have gained through the recruitment process.

1.5 Due to prescribed terms for trust port board members e.g. within harbour orders, these organisations regularly appoint new NEDs and other board members. It is important that trust ports tailor training for new board members as well as for those who have been in post for more than a single term. Additionally, it should be remembered that each trust port approaches NED duties specifically in relation to local requirements, so candidates who have served as NEDs elsewhere will need to understand expectations for their new role. Equally, those transitioning from executive management into NED roles will need to align the differing expectations.

1.6 Most NEDs take on more responsibility as they become familiar with the role and the running of the port they are working for. As a result, there is likely to be a requirement for continued training and sometimes specialist training where the board member is going to take on specific roles e.g. joining a committee supporting the board or the executive. Even where members are not expecting to take on more responsibility Chairpersons should partake in and encourage continuation training for those members who have been on the board for some time. The BPA provides workshops and briefings specifically for port board members e.g. the Port Marine Safety Code (PMSC) for



Duty Holders. These provide competency enhancement and the opportunity for attendees to share best practice and interact with successful professionals who have experience from working with trust ports.

1.7 Governance arrangements at trusts are usually kept under review with evaluations planned and achievement tracked and reported, to ensure that these occur. These regular governance checks can benefit from being combined with a wider review of powers.

1.8 This guidance is advisory, and the BPA does not accept any legal liability for any of its contents.



Section 2 - Understanding Trust Ports and their boards

2.1 There is a wide variety of types of ports in the UK and a trust port is one type of Statutory Harbour Authority (SHA), which has been empowered by government to manage a particular location. A variety of 459 SHAs exist across the UK, and all have their own legislation or Harbour Order which defines their powers, limits, and structure. No two ports are the same, but some port responsibilities are common even though scale can vary enormously.

2.2 There are three main types of SHA: private, municipal and trust ports. Additionally, there are a handful of other types owned and/or operated by government and the Ministry of Defence. Private ports have equity owners or shareholders, and municipal ports are owned by local authorities. Trust ports are slightly different and often need explaining to both those outside and inside our sector.

2.3 A regulatory regime exists, and ports policy is almost entirely the responsibility to the different devolved administrations around the UK, although the regimes are broadly similar. If a port wishes to amend its Harbour Order it must apply to the relevant part of government for a Harbour Revision Order.

What is a Trust Port?

2.4 Trust ports are a type of SHA. Further information can be found in the following BPA resource for our members:

[What are Trust Ports? A BPA Briefing Paper](#)

2.5 Trust ports are independent statutory bodies, each governed by their own unique statutes and controlled by a local independent board. There are no shareholders or owners, and any surplus income is invested back into each port for the benefit of its stakeholders. Trust ports own themselves and are strategically and financially independent of government and are run as private companies generating income from their operations, services, activities, and estates. For the overwhelming majority of trusts there are no formal links to government other than following rules and regulations which apply to all types of port.





2.6 Some trust ports are primarily conservancy authorities, meaning they perform the basic but essential function of maintaining a safe marine environment in their harbour, whereas others undertake wider port operations including activities ashore.

Trust port boards

2.7 Essentially trusts are run as businesses and like many companies a trust board is typically used to oversee the functioning of the port and provide governance as well as set strategy. They employ an executive team to handle the day to day running and operations of the port.

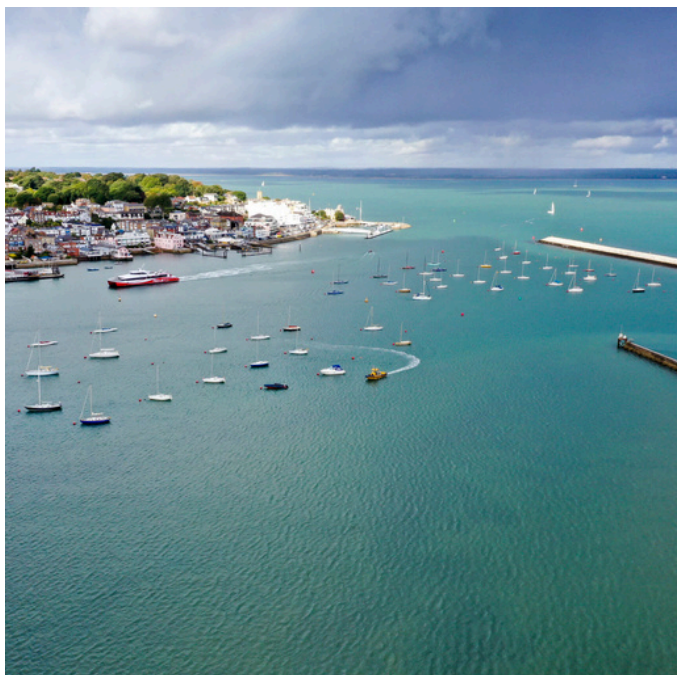
2.8 As trust board members are non-executive they will not typically be present at the port on a daily basis but instead attend board meetings which can vary in frequency according to each port. As with other businesses, many trusts will establish sub committees such as for finance, audit, and remuneration, amongst others.

2.9 As most trusts are statutory corporations they are not limited companies nor required to register directors with Companies House. Some trusts, however, have the power to establish subsidiaries or joint ventures which might be Limited companies. Trust board members are not usually employed by the port and some trusts do remunerate their boards and may have differing arrangements. Board member terms are typically for three years and can be renewable for a second term, but again this varies by trust and can be different for Chairs.



2.10 Typically, trusts recruit and appoint their own boards and those board members select chairs and deputies. Each will have their own recruitment processes and terms, but since the early 2000s many trusts have moved towards a skills-based approach to recruitment making sure they include a good mix of business and strategic experience. For a handful of trusts in England and Wales, and Northern Ireland, the Secretary of State for Transport, and the NI Minister for Infrastructure retains responsibility for appointing some or all board Chair and NED positions. There are also some other trusts where local authorities or other public bodies appoint board members, however once in their role all board members have a responsibility to the port and not to the organisation they have been appointed by.

Section 3 – Government Guidance



3.1 In terms of formal government guidance which is relevant to trusts, the DfT has produced three key documents: the [PMSC](#), and the [Ports Good Governance Guidance](#) (PGGG) for English trusts and the equivalent, and the [Modern Trust Ports for Scotland](#) (MTPS). The PMSC has a UK-wide scope and while there are no specific Northern Irish and Welsh versions of the PGGG or MTPS, government officials have advised trusts to consider the applicable sections of the PGGG. These documents describe how the government expects an SHA to be managed. Compliance with these documents is not legally binding but the documents do set out best practice as well as details on the standards that are expected.

3.2 PMSC and PGGG/MTPS are fundamental to the success of trust port management and contain details that directly address the

standards expected of a board member; these documents should be on the reading list for all board applicants. A clear understanding of the role and responsibility of Duty Holders (usually board members, see extract below) early in the recruitment stage can help to sift out those who are less comfortable with the personal responsibilities that come with board membership.

3.3 Critically, it should be noted that these government guidance documents signpost the legislation under which SHAs may be prosecuted if they are not aware of and/or fail in their duties and responsibilities.

PGGG and MTPS and trusts

3.4 The PGGG is applicable to all types of ports and has a useful section specifically on trust ports, meanwhile the MTPS is solely for Scottish trusts. Although these two documents cover trust port boards, the advice is general in nature and is one of the reasons the BPA has prepared this guidance document for our members. The MTPS in particular has some helpful content on trust port boards, for example looking at recruitment and diversity, but this is very much given from a perspective of organisational need and not designed for an individual board member to understand their duties.



PMSC2 - Extract

Trust port board members should ensure they are familiar with and comply with the PMSC, especially the extract shown below:

The PMSC is primarily intended for the “duty holder” which will, for most organisations, mean those members of the organisation, both individually and collectively, who are ultimately accountable for marine safety. All duty holders should therefore familiarise themselves with the Code and review any implications for their marine operations.

It is strongly recommended that the duty holder, and all officers involved in marine safety, also consider the advice on good practice provided in the Guide as well as reviewing the recommendations and the common lessons learned from major accidents and incidents which can be found on the Marine Accident Investigation Branch website.

The Government, other regulatory authorities and the industry associations have a strong expectation that all statutory harbour authorities will comply with the Code and other organisations are encouraged to do so. Authorities should note that:

The Code does not contain any new legal obligations but includes (amongst other things) references to the main legal duties which already exist.

Failure to comply is not an offence in itself. However, the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be indicative of a harbour authority being in breach of certain legal duties. Moreover, the organisation may suffer reputational damage if it has publicly committed to the Code’s standards and then fails to meet them.

Periodically and/or following a major incident or accident, the regulatory authorities will seek assurance that organisations are complying with the Code. The Government will monitor levels of compliance to assess its effectiveness in delivering improved safety performance.

A link may be drawn between a failure to implement the principles of the Code and prosecution under Health and Safety legislation.



Section 4 - Principles of Good Governance: What is governance and why is it important?

What does governance mean?

4.1 Governance can be defined as: *“The system by which entities are directed and controlled. It is concerned with structure and processes for decision making, accountability, control, and behaviour at the top of an entity. Governance influences how an organisation’s objectives are set and achieved, how risk is monitored and addressed and how performance is optimised.”* Governance is a system and process, not a single activity and therefore successful implementation of a good governance strategy requires a systematic approach that incorporates strategic planning, risk management and performance management. Like culture, it is a core component of the unique characteristics of a successful organisation.”

Why is good governance important?

Organisations should adopt good governance practises for many reasons including:

To preserve and strengthen stakeholder confidence. Nothing distracts an organisation more than having to deal with a disgruntled stakeholder group caused by a lack of confidence in the governing body. On the positive side, a supportive stakeholder base can generate benefits for the organisation though practical as well as social and emotional support, the latter being intangible but very valuable attributes that all organisations should strive to achieve and sustain.

To provide the foundation for a high-performing and reliably compliant organisation. The achievement of goals and sustainable success requires input and support from all levels of an organisation. The board, through good governance practices, provides the framework for planning, implementation, delivery, and monitoring of performance. Without a robust framework and reliable foundation to build upon, the achievement of great performance that is long term becomes problematic and less likely. Achievement of the best performance possible, within existing capacity and capability should be an organisation’s ongoing goal. Good governance can enable management and colleagues to be “the best they can be.”

To ensure the organisation is well placed to respond to a changing environment. Trust port external contexts involve constant change. Technology has created an information age that has transformed our world, and for an organisation to both survive and thrive (including remaining profitable) so it can fulfil its mission and achieve its vision, a system has to be in place to help identify changes in both the external environment and emerging trends. This process of understanding our changing world does not happen by chance, it requires leadership, commitment, and resources from the governing body to establish and maintain such a system within the organisation. Change generally does not happen overnight, it is there for all to see if there is a system in place for looking. Additionally, for changes that are not anticipated, effective governance can enable effective responses, including to acute events. Governing bodies, as the ultimate leaders of an organisation, should take prime responsibility for this activity.

In summary, governance encompasses the processes by which organisations are directed, controlled, and held to account. It includes the authority, accountability, leadership, direction, and control exercised in an organisation. Greatness can be achieved when good governance principles and practises are applied throughout the whole organisation and that’s why governance is important.



Governance versus Management

4.2 Governance is not the same as management. Governance is high level: vision, strategy, oversight and accountability, whereas management relates to day-to-day operations. A trust port governance team (the board) is different from its management team (the executive) which is made up of paid or volunteer workers. While many trust ports have board members supporting activities using their experience and expertise, it is essential to understand the differences and the behaviour that is required of board members versus the executive to avoid boundaries being blurred and losing objectivity. As a governing body the board should focus on setting the trust's mission and challenging the trust's performance. Executive delivery colleagues, including management, are responsible for implementation of the mission and achievement of goals.

Good Governance: Where the Board & Executive Come Together



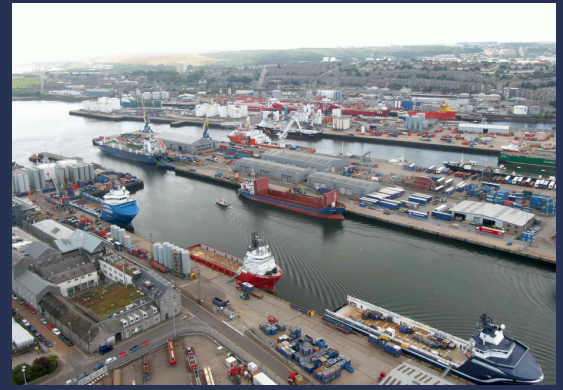
The trust port model and governance principles

4.3 Essentially a trust port is a private sector business but unlike most traditional businesses it cannot be owned by any other entity. Trusts are not owned by the government and do not typically form part of the public sector. A common feature of the model is that trust ports are, to a certain degree, run for the benefit of the port's enduring integrity and its stakeholders. Essentially the port needs to be a functioning and successful business so that it can operate properly and safely, and therefore the board, which sets the strategic direction and oversees the port's activities, needs to ensure the port is well run. Modern governance and business best practice means that ports are now encouraged to seek out board members with the right skills and experiences.

4.4 This evolution is now enshrined in the key principle that underpins the recruitment and appointment of a trust port board member as set out the PGGG which states:

Previous good governance guidance established that trust port board members should be appointed on the basis of merit and that board member should act independently in the best interests of the board, rather than represent the interests of particular stakeholders. This remains a key principle underpinning trust port board membership and appointments.

4.5 Having suitably skilled board members also protects trusts from being focussed on issues of which some board members might have a particular interest. For example, a customer or user of a port might find it challenging to balance their own interests with a port's need to raise more revenue. PGGG sets out the principles in relation to leadership, board effectiveness, accountability, and remuneration. The PGGG also suggests that board members adhere to the guiding principles adapted from the principles of public life, first set out by Lord Nolan in 1995, as follows:



- **Independence** - A trust port is an independent statutory body. All board members are appointed to act independently in the best interests of the trust port and all of its stakeholders both present and future.

- **Accountability** - Board members are accountable for their decisions and actions to all stakeholders of the trust port and should submit themselves to whatever scrutiny is appropriate to their office.

- **Openness** - Board members should be as open as possible with all stakeholders about the decisions and actions they take. They should publicise the reasons for their decisions and restrict information only to the extent that matters of commercial, or personal (personnel) confidentiality are involved.

- **Selflessness** - Board members should take decisions solely in terms of the interest of stakeholders of the trust port. They should not do so in order to gain financial or other material benefits for themselves, their family and friends or any group or organisation with whom they are associated.



- **Integrity** - Board members should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

- **Objectivity** - In carrying out trust port business, including making appointments, awarding contracts, or recommending individuals for rewards and benefits, board members should make choices on merit.

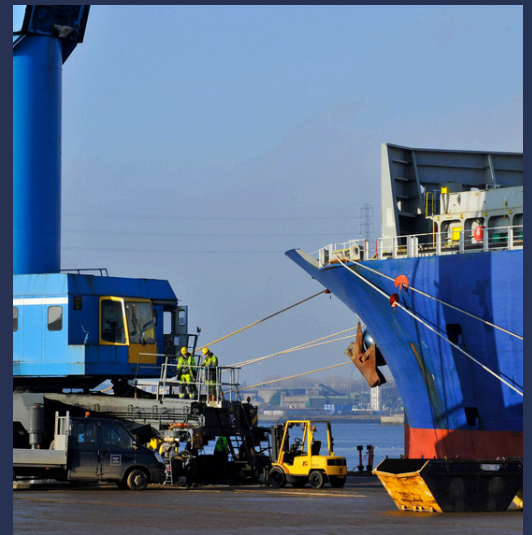
- **Honesty** - Board members have a duty to declare any private interests which might influence their trust port duties, and to take steps to resolve any conflict arising, in a way that protects the interests of stakeholders of the trust port.

- **Leadership** - Board members should promote and support these principles (and ensure that they are adopted by fellow board members) by leadership and through example.

4.6 New board members should be made aware of and confirm that they will comply with their responsibilities and the need to act in accordance with the principles of good governance adopted by the board. This is normally done with an annual declaration form which can include a declaration of interests, which is also typically re-confirmed verbally at the start of board meetings. Boards members should identify all potential conflicts of interest and if necessary, remove themselves from associated proceedings.

Board constituency and terms

4.7 The exact constitution of a trust ports board is normally detailed in the relevant Harbour Act or subsequent Harbour Revision Orders (HRO). PGGG requires that appointments should be made through open competition. Boards should consider what skills they need to contribute to future management e.g. finance, legal, stakeholder engagement, risk, marine expertise, tourism, regeneration, new business investment and environmental. In addition, PGGG requires that non-executive members should be appointed for terms of three years and only re-elected for more than two terms in exceptional circumstances. All board roles should be objectively, transparently, and formally agreed including re-appointment of Chairs.



Section 5 – Board Responsibilities

5.1 The PMSC requires the identification of duty holders:

Duty holder identification: Formally identify and designate the duty holder, whose members are individually and collectively accountable for compliance with the Code and their performance in ensuring safe marine operations in the harbour and its approaches.

5.2 PMSC outlines general **duty holder duties and powers** as follows:

For the purposes of the Code, the duty holder should ensure that the harbour authority or organisation discharges its responsibilities for:

Safe and efficient port marine operations: Having regard to the efficiency, economy, and safety of operation of the services and facilities provided as well as ensuring that appropriate resources are made available for discharging their marine safety obligations.

Open port duty: Taking reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property.

Conservancy duty: Conserving the harbour or facility so that it is fit for use; this duty also includes providing users with adequate information about conditions in the harbour or facility.

Revising duties and powers: The harbour authority should keep its powers and jurisdiction under review and take account of the various mechanisms, such as harbour orders, which are available to amend statutory powers in an authority's local legislation.

Environmental duty: Exercise its applicable functions with regard to nature conservation and other environmental considerations.

Civil contingencies duty: Take account of the organisation's responsibilities under the Civil Contingencies Act 2004 including planning, preparing and co-ordinating responses to emergencies which threaten serious damage to human welfare, the environment or

Harbour authority powers: Harbour authorities must be aware of their statutory powers and responsibilities under both primary and secondary legislation.

5.3 Duty holder duties and powers - The PMSC also covers specific duties and powers that the duty holder should be aware of:

Powers of direction: Powers to direct vessels are available and should be used where appropriate to support safe navigation.

Regulation of dangerous vessels and substances: Dangerous vessels and dangerous substances (including pollution) must be effectively managed.

Pilotage: A pilotage service must be provided if required in the interests of safety as determined by risk assessment.

Local lighthouse authorities: All statutory harbour authorities and some other organisations have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks, obstructions or changes in the navigable waterway managed effectively.

5.4 Legal obligations - In addition to the PMSC, there are a range of legal obligations and compliance requirements that affect trust ports. These will normally be undertaken by the executive, often with the assistance of contracted advisers, but this does not absolve board members from accountability if there are shortcomings and failures to comply. The following legislation affects most trust ports:

- **Companies Act 2006** - Financial operation, company records, filing of accounts, and submission of tax returns (corporation tax and VAT where applicable).
- **Businesses Employment Law Obligations** - Role descriptions, pay scales, working hours, holiday entitlement and sick pay arrangements.
- **Health and Safety Legal Obligations** - Entitlement of employees to work in a safe environment, welfare of employees. Details of minimising risk to employees and details of risk within the workplace can be combined within the safety management system or in some cases separate risk assessments are used.
- **Regulatory Reform (Fire Safety) Order 2005** - Maintenance of fire protection systems, fire risk assessments, fire marshals and evacuation procedures.
- **Insurance Legal Obligations** - Employee liability insurance and public liability insurance for areas accessed by public.
- **General Data Protection Regulations (May 2018)** - Lawful collection and processing of legal data.
- **Consumer Contracts Regulations 2013** - Terms of sale and information for consumers.
- **Website Legal Obligations** - Use of websites



5.5 Board versus Executive - The extent to which each of the above responsibilities affect a specific port will vary as will the extent to which board members play a role in assurance of compliance.

In larger ports there will be more resource (workers, assets, and finances) which will allow much of the management and detail to be conducted by the trust's executive and delivery team, assisted where required by contractors or service providers. This fosters confidence that skills required for success are in place and delivering effectively, and that checks and controls are in place to ensure success e.g. audits are robust. However, appearances and assumptions related to effectiveness should be challenged and tested by the board.

In smaller ports it can be a challenge to ensure that responsibilities and the extent to which they apply are fully understood and complied with; in these situations, an effective board can be even more critical. Resource constraint typically found in smaller ports can provide a compelling need for the board to provide support where required to assist the executive, however board members must always remember that they are not the executive and must remain on the correct side of that line i.e. ensure division of responsibilities between the board and executive are always adhered to. See section 4.2.

5.6 Duty holder responsibilities - The PGGG reiterates the responsibility of the duty holder that is contained within the PMSC:

The duty holder is responsible for ensuring that the Statutory Harbour Authority (SHA) complies with the PMSC. As set out at para 1.8 of the PMSC, in order to do undertake this role effectively, a duty holder should:

- be aware of the SHAs powers and duties related to marine safety;
- ensure that a suitable Maritime Safety Management System (MSMS) which employs formal safety assessment techniques is in place;
- appoint a suitable designated person to monitor and report on the effectiveness of the MSMS and provide independent advice on matters of marine safety
- appoint competent people to manage marine safety;
- ensure that the management of marine safety continuously improves by publishing a marine safety plan reporting performance against the objectives and targets set; and
- report compliance with the Code to the MCA every 3 years.

5.7 Delegation of Authority – Board members can delegate some responsibilities but cannot delegate accountability. As detailed within PGGG:

Duty holders cannot assign or delegate accountability for compliance with the PMSC to others, such as a Harbour Master.

5.8 Although board accountability cannot be delegated, responsibility for certain duties and tasks can. In this respect the duty holder's responsibility includes oversight of the employment of suitably qualified and experienced personnel (SQEP), having the correct checks and controls in place, and ensuring that the board receives accurate reports that correlate with internal and external audit. A common misconception of PGGG para 2.35 relates to safety - that duty holders need to become experts in marine safety, which is incorrect. The appointment of a suitable designated person (DP) is fundamental to ensuring that the duty holder is protected from having to make safety judgements when they may not be suitably qualified or have all of the information to make decisions.



It is not good governance for duty holders to get involved in the detail and decision making related to safety management, even if they are SQEP. This is a classic example of the need to stay the correct side of the line between board and executive delivery. Where a duty holder undertakes safety management decisions, this type of behaviour can lead the executive to the conclusion that they are no longer responsible and is almost certainly likely to lead to a breakdown in trust between the executive and board. It is important for everyone to be very clear on who is responsible for making safety related decisions and that they are SQEP. Maintaining correct division of responsibility is critical to safety performance and is a significant risk that needs to be effectively controlled e.g. through prescribed duties, training and challenge of non-compliant behaviours and acts as well as omissions.

5.9 Since the role of the DP is critical in ensuring that the board are confident that they have properly understood and are carrying out their governance responsibilities, the relationship between the Board/HM/CEO and DP, is discussed in detail in the next section.



Authority and Delegations

5.10 The most important responsibilities of trust port workers in senior roles are detailed in harbour legislation (Acts, HROs etc.). Senior personnel can delegate certain tasks (responsibility not accountability) to others including junior managers, supervised workers, plus service providers. This is best done within their job description, role scope or terms of reference, with discussion of expectations and performance during review processes e.g. mid-year/annual appraisals. Delegation of safety roles must be detailed in the port's Safety Management System (or similar documents). It is recommended that ports develop an authority matrix which will enable all personnel to be clear on the allowances per level/role and delegation duties they have assigned/been assigned.

5.11 Board members undertaking delivery - There is provision for trust board members to take on port roles that use their expertise to support the SHA where insufficient resource creates risk of loss or harm, including failure to leverage opportunities. There may be instances where resource gaps cannot be filled by a contractor or vendor support, or through an uplift in employees e.g. lack of available budget or talent catchment.

Explicit clarity is required on the precise responsibility and limitations of any board member undertaking executive delivery tasks, even where the assignment of role or activity is supported by the executive. For committee work, board member roles should be defined in appropriate terms of reference e.g. Chair of Risk Committee. For limited ad hoc pieces of work such as a commercial study for a development opportunity, or creation of environmental plan, the tasking should be recorded e.g. within meeting minutes. Details should include who proposed, who decided, when, and details of the scope plus any associated remuneration/benefits. This will prevent any confusion over who is responsible and who is providing support and should avert conflicts of interest and ensure compliance with division of responsibility for governance versus executive delivery.

5.12 Board members supporting delivery - Care also needs to be taken to ensure clarity where board members provide support for junior managers on their role, or work originally delegated to those delivery workers from the executive leadership e.g. CEO/HM. Subordinates of the CEO/HM who are supported by board members might confuse who is responsibility for delivery (themselves/executive team versus those providing support from board) and fail to make the executive colleague who is responsible for the activity/performance area aware of changes or decisions that are being made. Having clear reporting line back to the board on any executive support provided by a board member is required to ensure clarity for all parties.

5.13 In smaller ports board members often take on roles as an SHA point of contact for external engagement or as an attendee at stakeholder group meetings in addition to executive colleague representative(s). Care must be taken to ensure that conflicts of interest do not arise and if they do, these conflicts are effectively controlled e.g. these roles and assignments to members must be discussed among the board and recorded. For example, it would be inappropriate for a board member who is a commercial user of an SHA to be the board member who is the point of contact with the commercial user stakeholder group, unless that individual board member was excluded from board discussion on commercial issues. This situation would significantly curtail the board member's effectiveness on general board duties which include ensuring the trust port's commercial sustainability.



6. Stakeholder Engagement

6.1 The PGGG set out guidance to SHAs on the principles for stakeholder engagement as follows:

Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders.

Principles

- All SHAs should engage effectively and openly with a wide range of stakeholders that have an interest in their harbour
- SHAs should periodically assure themselves that stakeholders have been identified and that engagement with them is appropriate and effective.
- SHAs should also consider how the voice and views of stakeholders can be taken into account in their work, including in governance

6.2 PGGG also confirms identifies of typical stakeholders.

Stakeholders will vary from harbour to harbour, but are likely to include, amongst others and in no particular order the following:

- local communities
- harbour users – both commercial and leisure and their representative organisations
- local economy, such as local businesses including suppliers
- local government
- central government
- others – including employees, MPs, and elected representative



7. Board Members and Safety Management

7.1 Awareness - For most new board members there will be some anxiety in the initial period of tenure since many are unlikely to be familiar with the responsibilities of the trust port and how they personally fulfil their individual responsibility particularly if they are a duty holder. For those unfamiliar with port management and safety management it will be important for the HM/CEO to educate them in the port's safety assurance processes. Equally, existing board members should have their knowledge refreshed regularly, and new member who have been on other port boards should receive local information for their new SHA.

7.2 There are a number of relationships that are critical to the success of safety management in trust ports. The appointment and role of the Designated Person (DP) puts them in a pivotal position for not only achieving success (see 5.8 above) but also providing early indications to the board that all is not well, and that action needs to be taken:

Designated Person Each organisation must appoint an individual as the "designated person" to provide independent assurance directly to the duty holder that the MSMS16, for which the duty holder is responsible, is working effectively. Their main responsibility is to determine, through assessment and audit, the effectiveness of the MSMS in ensuring compliance with the Code.

Annex C provides more detail on the role of the DP, his/her relationship with the executive, and how the DP can provide assurance to the duty holder that they are meeting their safety management responsibilities.



7.3 Culture - Ensuring that the culture across the organisation in the port encourages feedback to improve processes is very important. A well-run risk and incident reporting system, and complaints and communications log can help the board to focus expenditure and resource into areas that warrant investment. These feedback controls should be signposted by board members as the correct point of entry/engagement for those unhappy with the SHA or those suggesting change. If a board member champions individual issues raised with them by others i.e. flagging on someone else's behalf, this could result in a disproportionate response and could also be seen as unfair by other stakeholders or even a conflict of interest by the board member. Monitoring SHA responses to questions, suggestions, and complaints, will give board members important feedback on how the trust port is perceived. The actions taken by the board in response to these communications should relate to individual instances as well as to trends that feedback controls divulge and make apparent.

7.4 Effective communication and feedback processes should provide the duty holder with confidence that their port is being safely managed i.e. duty holders should be reassured if effort is being taken to gather and use safety related information. Examples include:

- Staff attendance at safety related workshops/meetings/conference
- Liaison with other ports including regional port meetings
- Attendance of staff/board members at BPA/UKHMA workshops
- Use of MAIB and other incident management results to review local trust port procedures
- Bench marking of safety systems by SQEP personnel including contractors/vendors/service providers
- Requests to the MCA for Health Checks
- Exercises with external authorities e.g. Blue light services, MCA, Tier 2 responders, and Resilience Forum

7.5 Performance indicators and reporting - The following sections 8 and 9 discuss key performance indicators (KPIs). Safety reporting is critical to the board having confidence in the way the executive manages the port.

8. Performance Oversight

Guidance on the role of board members in public bodies

8.1 Trust port SHAs should align to governance arrangements utilised by public bodies. The Code for public bodies¹⁷ recommends that a board member:

- Understands the operational environment in which their public body operates within the context of the wider public service delivery landscape
- Attends Board meetings on a regular basis and is well prepared by reading relevant papers in advance and, if necessary, seeks further information to ensure their understanding
- Attends training events and keeps up to date with subjects relevant to the public body's work
- Contributes to the work of any committees that have been established by the Board
- Represents the Board at meetings and stakeholder events when required
- Contributes to strategic development and decision-making
- Clarifies which decisions are reserved for the Board and which should be delegated
- Monitors the reporting of performance and holds management to account through purposeful and constructive challenge and scrutiny
- As necessary, seeks further information than that which is provided to give assurance on organisational performance
- Questions and, as necessary, challenges proposals made by fellow Board members and the executive team constructively and carefully to reach and articulate a considered view on their suitability;
- Provides a creative contribution to the Board by providing independent oversight on issues of strategy, performance and resources
- Behaves in accordance with the agreed Code of Conduct
- Establishes and promotes the public body's role in the community





Understanding and owning the strategy

8.2 Armed with the knowledge of the role and responsibilities of a board member, and the principles for good governance and guidance on safety management from the duty holders perspective, a board member is equipped with the tools that will enable them to effectively achieve good governance for the organisation they are part of and the associated strategy.

The strategy should be formally defined as the trust's approach to achieving the port's vision/mission.

A trust port's strategy should be defined and owned by the board in collaboration with the executive, reflect stakeholder expectations, and be used to describe to colleagues what is required of them.

Stakeholders need to understand the strategy, its origins, and how it affects them. If a board member does not understand the strategy or how it drives colleague behaviour and actions, then it is likely that the workforce and other stakeholders will not understand or be supportive of strategy achievement. If the strategy is not well written, stakeholders may be encouraged to excessively challenge the activities of the organisation including changes such as Master Plan, revisions to the HRO, and enhanced fees.

Early and repeated review of strategy and policies that outline the way in which the board expect the organisation to be run by the executive is necessary to ensure collective and individual board member success.

Board and executive interactions

8.3 If a trust port is being managed well and meeting its objectives as set out by the board, then interaction between board members and the senior executives (Chief Executive, Harbour Master, Business Managers) is likely to be primarily through board meetings, stakeholder engagements and other formal interactions. The success of these interactions depends on whether the board has clearly set out and communicated the strategy, policies and achievable objectives, and the executive is clear on their role in delivering these. For the board to be confident that they are fulfilling their responsibilities they will need to seek and receive an appropriate level of feedback.

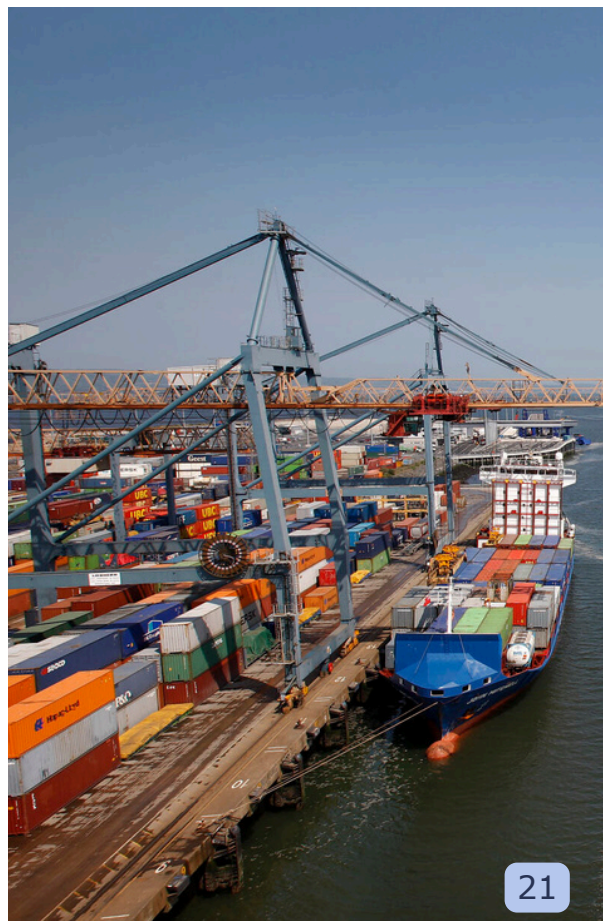
8.4 There are a number of techniques that can be used to help board members gain confidence that the executive is aligned to their vision/mission, strategy, and values. All board member interactions with the executive team should result in feedback for the board through the Chair as well as that provided by senior executives that attend board meetings e.g. CEO/HM. This will help the whole board, including the Chair, to ensure that the executive remain on course and have the resource they need to make progress, as well as maintaining the effectiveness of board members e.g. supporting the executive whilst ensuring they do not act as though they are part of the executive. In some cases, interactions may include assistance with the preparation of documents directed by the board and the review of these in or out of board meeting sessions will be sufficient feedback. Responses on other interactions between board members and executive will be important to help the Chair form their assessment of the senior executives for their performance reviews, and to fulfil the Chair's responsibility for annually assessing the performance of board members.

8.5 All board members should be encouraged to ask questions of the executive (typically keeping the Chair informed) and should generally focus on feedback that might be useful to help them form a view of the level of success being achieved and be conducted as positive challenge rather than obstruction. It is good practice for such requests for information, and the information provided in response, to be shared with the Chair and other board members as they may not be aware of the situation and may have supplementary questions or information to contribute.

8.6 It is also expected that the CEO/HM will provide feedback to the Chair on interactions of the executive team with board members (including the Chair) which will help the Chair to create annual evidence-based reviews of board members.

Evidence based assessment of performance

8.7 Some board members will have a view of the SHA before they join the board, and after joining will have interactions that help to inform their opinions of how the trust port is performing. Where interaction provides significance positive or negative feedback it should be reported to the Chair and passed on the CEO/HM so that positive feedback may be provided or alternatively corrective, so that preventive and appropriate remedial action can be taken where necessary. It is important to ensure that judgements on the performance of the SHA, colleagues, and service providers are not made on the basis of subjective beliefs that cannot be evidenced or corroborated. Often comments from the public or other stakeholders can be used to refine feedback received by the board to ensure that they have a balanced view of performance, including that of the board.



8.8 Most boards will review a number of metrics (KPIs) in order to gain assurance, the organisation is performing well and to help improve processes, procedures, and compliance. If trends do indicate that there are shortcomings it may be necessary to commission a new piece of work to gather evidence to assist with decision making. It may be that a single report is not accurate or indicative of habitual or systemic practice. It may be that regular reporting is required to build the picture that supports the need for change. Even if no change is required evidence will help to inform stakeholder views of the typical pattern of performance and explain why and how decisions are made, providing transparency. In the most severe case of negative reporting, it may be necessary to suspend activities e.g. where there are safety concerns or where there is a risk of significant reputational damage. However, in most cases the board should be using reliable patterns of information to make sound judgements and decisions based on objective criteria and data. Documents that can be useful for providing evidence to assist decision making include:

- Audit reports and inspections including safety checks
- Incident reports and Dashboard/Log data (performance related trends such as how incident review drives improvements)
- Customer satisfaction comments (statistics and trends as well as common complaints and positive feedback)
- Stakeholder surveys and consultation meeting minutes
- Staff engagement surveys
- Board Reports

Board and Committee Meetings

8.9 Board meetings and committee meetings should be conducted in line with the principles of governance detailed in the PGGG (see section 3).

8.10 Agendas for trust port meetings vary depending on the port's responsibilities and topics being discussed. Important forums such as governance meetings should have a standing agenda which ensures consistent consideration of key areas of port responsibility e.g. agreement of previous minutes, and actions arising. Executive reports for committee or board meetings should also align with port responsibilities. This may mean that there are agenda items where the executive has nothing significant to report. Having the executive report areas where there has been no significant activity tells the audience (committee / board) that they are not missing information or feedback.



8.11 There will often be agenda items that occur less frequently than the usual cadence of meetings e.g. monthly, quarterly, six monthly or annually, in order to align with events and reports. For example, the Budgeting and Finance discussion may occur annually, and stakeholder meeting reports will depend upon the frequency of those sessions e.g. port user group quarterly events.

Depending upon the amount of board business and the time taken to discuss this content in session, and also the need to dedicate sufficient attention and specialist resource to particular topics e.g. Risk & Audit, it may be necessary to establish board committees. Some ports have the arrangements for committees established in their constitution (similar to articles of association), alternatively committees may need to be established under particular terms of reference. Terms of reference should include forum purpose, composition, quorum, interfaces with other forums, and other details of operation.



9. Strategy, policy, and long-term planning

Is the strategy fit for purpose?

9.1 Ensuring that the board remains strategic rather than tactical can be a challenge and often members will prefer to dig into operational detail in the field of their interests or professional expertise. Ensuring that strategy and policies are up to date and the organisation is actually making progress towards delivering the vision, is the key role of the board.

9.2 If the strategy and policies for achieving it are not maintained, the board may focus on the wrong priorities. PGGG Section 3 includes guidance on commercial accountability, compliance, and strategic reviews. The PGGG principles to ensure that trust ports remain fit for purpose include:

- Trust ports are commercial businesses and should be operated efficiently, effectively, and prudently to generate a commercially acceptable rate of return.
- Performance indicators are a useful tool for assessing a trust ports efficiency and performance over time. They are also useful for stakeholders as part of holding trust ports to account.
- Trust port boards should review their governance arrangements to check that they remain in line with the best practice and standards in this guidance. Where necessary, revised arrangements should be put in place.
- Trust ports should have a system to consider complaints from stakeholders about governance issues as well as other matters arising from the port's activities.
- Trust ports with an annual turnover of at least £10m (2017 prices) should periodically conduct a strategic review to check that the trust port model remains the best one to deliver its strategic vision and objectives, including investment requirements. These reviews should also consider alternative options where necessary.



9.3 Strategy should outline the approach to achieving the vision, mission, or ultimate goals. The strategy should be aspirational and reflect the needs and demands of the various stakeholders. There may be tension between stakeholders with some wanting increased activities and development of facilities and others determined to reduce activity or insist on little or no change. For this reason, it is important that stakeholder input is sought in any review of strategy and that this input can be clearly signposted to support the strategy or chosen actions and activities that stem from it (thereby ensuring the board remains transparent and accountable). If there are inconsistencies these should be addressed through stakeholder engagement. Board members should take decisions solely in terms of the interest of stakeholders of the trust port and according to the mandate of the trust.

9.4 The vision, mission or goal and strategy should be cascaded into objectives that outline the aspirations of the organisation. These objectives should be defined for various timelines, short and long term, and kept under review as the port's context and environment evolve e.g. shifting customer base, market trends, and community needs. Objectives can reflect the various activities undertaken by the port or may reflect the desires of the various stakeholder groups. It is not unusual for trust ports to have objectives covering safety (including navigation), conservancy, leisure, and commercial, as well as other more detailed areas of activity. Objectives can be translated into actions and targets, for the port, teams, or individuals. Many will be delegated to the executive, but some are likely to sit with the board collectively or individually.



9.5 In large ports strategy and policy may be prepared by the executive or contractors, vendors, service providers, and then agreed by the board. In smaller ports the executive may not have the required resource to deliver the required extent of policies without assistance from the board. However, these documents are derived, the final versions must be owned by the board and the executive should be in no doubt about how to deliver against these requirements. An example of how long-term planning can be used to help ports set their annual cycle of activity is provided below (Annex B).

9.6 Having a clear strategy and plan for the organisation broken down to individual objectives for board members and the executive team allows the port's activity programme to be defined and clarifies who should focus on each aspect of organisational performance. Using objectives to focus board activity helps to keep their activities strategic and provide clear guidance to the executive on what needs to be done.

Are policies in date and do they reflect what actually happens?

9.7 Policy documents can become poorly maintained and overly detailed and so are not used effectively as reference guides or mandatory instructions. Consequences include practices deviating from expectations (compliance breaches). Setting, reviewing, and rewriting policy is an important task that can highlight and address shortcomings and at the very least make newer workers (including board members) more aware of what should be happening within an organisation.

9.8 Most trust ports will have a complex set of policies and keeping on top of them requires a dedicated and systematic approach. When policy documents are reviewed, board members should ensure that the values included within documents aligns with their vision. Often policy rewrites require stakeholder input, e.g. mooring and pilotage reviews, so there may need to be an engagement strategy and appropriate board time will need to be set aside for discussion and decision making in relation to stakeholder views. For policies to be effective, it is important to have a list of the current policies, planned review schedule, and regularly reviews of the timetable and resource allocated to the policy review. An example long term planning cycle is at Annex B.



Annex A: Trust Port Training Needs Analysis

Example Board Training Syllabus

	TOPIC	ATTENDEE	DURATION (annual)
1	Trust Port Background and Board Responsibilities	Chair or CEO	0.5 hr
2	Trust Port Board Member Role and Expectations		0.5 hr
3	Regulatory Compliance: Harbour Orders Strategy, Objectives, Governance, Roles & Responsibilities, PMSC Duty Holder & Designated Person	CEO or HM or Company Secretary or Clerk	1 hr
4	Key Aspects of the Strategic Plan	Chair and CEO	0.5 hr
5	Executive Responsibilities - Operations and Day to Day running and Reports	CEO or Operations Manager	0.5 hr
6	Finance including Cash Flow	Finance Director/Manager	1 hr
7	Health and Safety	CEO, H&S Manager, and HM	1 hr
8	Property and Estate	Property Manager	0.5 hr
9	Engineering, Channel, Dredging, Operations and Channel Surveys	HM or Harbour Engineer	0.5 hr
10	Communications Strategy	Communications Manager	0.5 hr
11	Stakeholder Relationships including Membership of Groups	CEO/Communications Manager	1 hr
12	Business Development	CEO or Commercial Officer	0.5 hr
13	Pilotage Operations	HM or Marine Manager	0.5 hr
14	Attend Annual Public/Stakeholder/Consultative Body Meetings	CEO or Corporate affairs Specialist	2 hrs

Annex B Long Term Planning

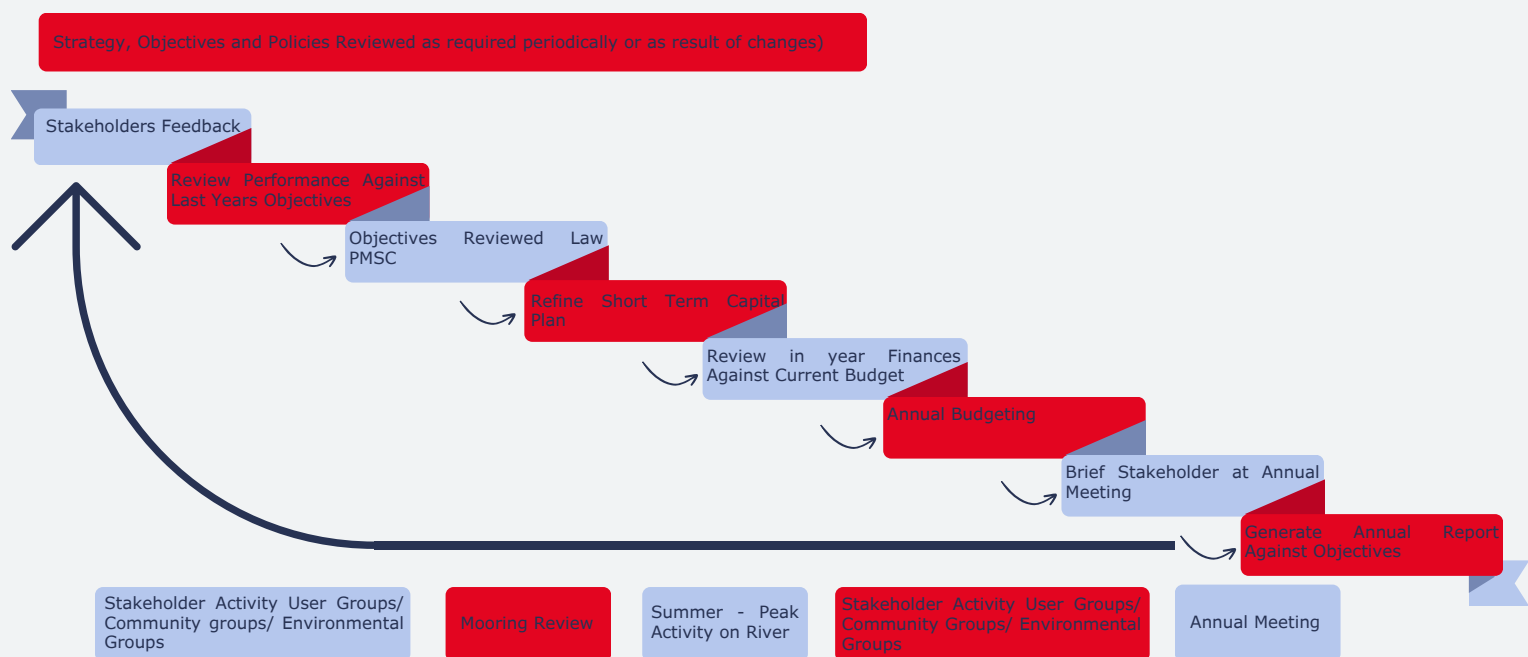
Example long term planning model

B.1 The model below shows a process that can be used for strategic planning. Whilst it looks complicated this model runs over a lengthy period with the duration being determined by the lifespan of the strategy. In most cases the success of delivery against any plan will be limited by resource available to assist delivery as well as timescale for consultation with stakeholders when change is required. If the plan is aspirational the first review will provide an opportunity for refinement and prioritisation of activities within available resource - the aspirational vision may not be wrong, but the delivery timescale may need to be longer.



B.2 The figure below shows an example of an annual planning cycle. This allows objectives to be set within a 12-month period to fit with annual staff objectives under the longer-term strategy. Deciding what will be delivered in the current year is based on previous year's financial performance. Often, more expensive equipment and infrastructure will need resource and planning well beyond an annual cycle. If this is the case, there remains the need to set short-term or annual objectives, and these may be for the delivery of phases of a longer-term project.

Harbour Annual Planning Process



Appendix C - Trust ports in the BPA

The diverse list of trust UK trust ports we represent is below. Given our role promoting governance and regulatory compliance, membership of the British Ports Association is typically a strong indicator of good port management and best practice. Our member ports of all ownership type and size uphold high standards and our trust members have looked to embrace modern governance rules on board appointments and commercial procedures in accordance with government guidance.

We do not speak on the behalf of those trust ports that are not on the list below and very much encourage them to join the British Ports Association so they can receive member support and be kept informed of relevant policy developments, attend our free briefing sessions, events, and working group meetings, plus much more.

Port of Aberdeen • Belfast Harbour • Berwick Harbour • Port of Blyth • Bridlington Harbour • Brightlingsea Harbour • Caernarfon Harbour • Cattewater Harbour • Coleraine Harbour • Cowes Harbour • Port of Cromarty Firth • Dart Harbour • Port of Dover • Eyemouth Harbour • Falmouth Harbour • Fowey Harbour • Foyle Port • Fraserburgh Harbour • Great Yarmouth Port Authority • Harwich Haven Authority • Inverness Harbour • King's Lynn Conservancy Board • Lancaster Port • Langstone Harbour • Lerwick Port • Littlehampton Harbour • Port of London • Lymington Harbour • Mallaig Harbour • Maryport Harbour • Port of Milford Haven • Montrose Port • Neath Port • Newlyn Harbour • Newport Harbour • Peterhead Port • Poole Harbour • Saundersfoot Harbour • Scrabster Harbour • Shoreham Port • St Andrews Harbour • St Margaret's Hope • Stornoway Port • Tarbert (Loch Fyne) Harbour • Teignmouth Harbour • Port of Tyne • Ullapool Harbour • Warrenpoint Harbour • Wells Harbour • Whitehaven Harbour • Wick Harbour • Yarmouth (IOW) Harbour

