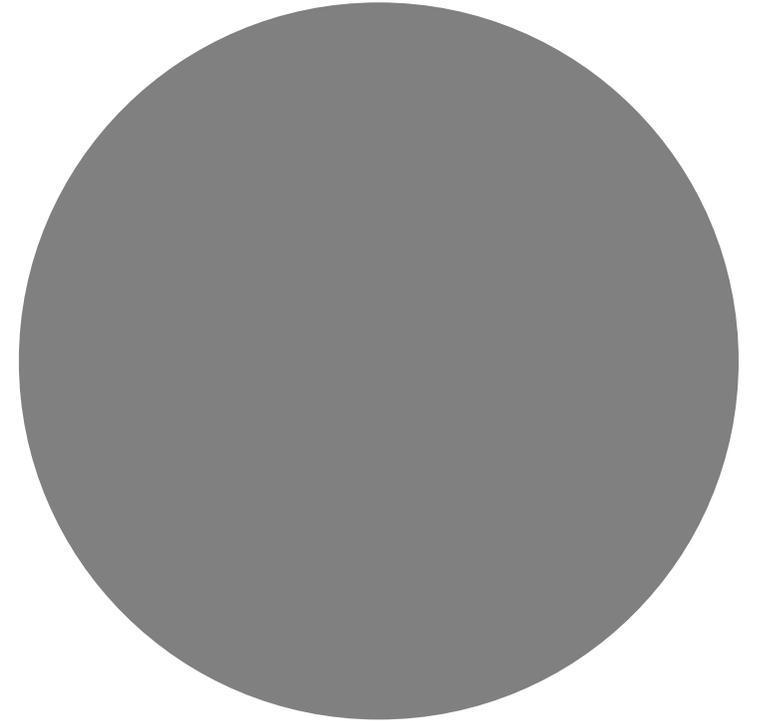


Dealing with Casualty Vessels

The harbour masters dilemma

Mark Sansom Falmouth Harbour
Commissioners



About the Author

10 years at sea with the RFA

3 years as a MOD Salvage and Mooring Officer

8 years as Deputy Harbour Master

19 years as Harbour Master

Dealt with multiple casualties – mostly damaged /burning vessel entry

Career spans 4 Different eras of state response

Full paper available

The Makings of a dilemma

The Sea Empress Incident

Prosecution of MHPA using S85 Water Resources Act

Lord Donaldson's Review

Erika

Prestige

MSC Napoli

MSC Flaminia

Legal Advice
taken
following
request to
consider
admitting MSC
FLAMINIA

- ***Against this background, it seems to me that there would be a palpable risk that, if the Harbour Master actively permitted the Vessel to proceed into the Harbour in circumstances where the leaking (or prospect of leaking) of effluent from the Vessel (where such effluent constitutes “poisonous, noxious or polluting matter or any solid waste matter”) he might be exposed to prosecution.***
- ***the mere fact that the commission of a criminal offence results from compliance with a direction from SOSREP will not preclude prosecution for (or give rise to a defence in respect of) such offence.***

The Harbour Master's Dilemma

There is a national policy of bringing damaged ships to shelter and this could be achieved by SOSREP directing a harbour master to permit entry of the vessel. Failure to comply with such a direction is a criminal offence.

Compliance with a direction that results in pollution could also be a criminal offence.

There is a precedent for arresting a harbour master and charging with a strict liability offence where widespread pollution occurs.

There is growing acceptance that in the event of large scale environmental damage there must be penalties for individuals based on outcome rather than fault.

Salvage – The Changing Landscape

- Era 1 - Commercial salvage only
- Era 2 - Powers of Intervention – Environmental Services rewarded
- Era 3 - Post Donaldson – SOSREP – ETVs – MIRG
- Era 4 – SOSREP only + vessels of opportunity (ETV in Scotland)

ERA 1

Commercial Salvage pre-dominates

Services offered where commercially advantageous to do so

Grounded vessels often remained where they landed

Oil Pollution regular event

ERA 2 – Powers of Intervention

Legislation passed post Torrey Canyon disaster

Commercial salvage the norm Lloyds Open Form popular

Lloyds Open Form 1990 introduced Special Compensation arrangements for environmental services

Legislation strengthened post Braer disaster 1993

Marine Pollution Control Unit primary government agency for casualty response

Example The Bergen incident (1994)

General Cargo Vessel carrying paper rolls
USA – Scandinavia

Fire on Board reported to UK authorities

MPCU ordered vessel to divert to Falmouth

Saga ensues

10 days later fire extinguished and vessel
continued on voyage

ERA 3 Post Donaldson

SOSREP post created

State towage and salvage resources (ETVs) contracted

Offshore firefighting capability developed

ETVs could go “off hire” to undertake commercial salvage

Availability of commercial salvage assets declined

Example – The Willy Incident (2002)

Vessel dragged ashore in Cawsand Bay Plymouth

Serious Bottom damage but re-floatable

Salvors agreed LOF with SCOPIC

Not permitted to berth in Plymouth

SOSREP negotiated port entry and dry docking in Falmouth

Salvors instructed to fully comply with port entry requirements

ERA 4 –
SOSREP only

Salvage tugs in short supply

Harbour tugs increasingly
unsuitable for salvage work

No offshore firefighting capability

Low value and uninsured vessels
create particular difficulties

Example – KUZMA MININ

Local resources deployed on a “good will” basis

SOSREP reluctant to use powers of direction in support of harbour master

No additional resources mobilised for re-floating – no Plan B

Vessel at anchor for 3 days before underwater inspection

Subsequent disagreement over implementation of National Contingency Plan

Lessons Learned

Correspondence indicates that Government view is that ports and harbours are fully responsible for managing incidents in their own statutory area

Implies responsibility for actions of vessels within the harbour and acting as salvor of last resort

No legal basis for this and inconsistent with the National Contingency Plan

Risk that “responsibility” equates to “blame” equates to “criminal responsibility”

Conclusions

Expectations have been raised that intervention will be effective but resources and availability of expertise have diminished alarmingly

The responsibilities of ports and harbours (both real and inferred) could be seen as a potential escape route for Government should failure occur and disaster result

Strict liability legislation can be used to establish criminal responsibility without proving negligence

Harbour authorities and their officers are hostages to fortune and the risks are greater than ever!