

UNITED KINGDOM MARITIME PILOTS' ASSOCIATION

Hon. President: Lord Tony Berkeley

HQS Wellington
Temple Stairs
Victoria Embankment
London
WC2R 2PN



office@ukmpa.org
www.ukmpa.org

To: ALL UKMPA MEMBERS

Circular 26/2020
15th November 2020

Dear Colleague,

Incident Procedures Revised November 2020

If you are involved in any incident – no matter how trivial it may seem at the time – it is imperative that you complete an Incident Report and forward it to the insurers.

The Incident report form with instructions, are available in the members area of the UKMPA website.

Minor incident - If you are involved in a minor incident, forward the incident report as directed.

During normal office hours you can also speak to Ken Pound at Tysers, if thought necessary.

Tel: 0207 621 8260 Email: ken.pound@tysers.com

Major incident - If you are involved in a major incident during office hours you should call Ken Pound Direct Tel: 0207 621 8260

Outside office hours, call 0800 6446 999.

This number will connect you to a member of the UKMPA executive.

The number works on a 'staged divert' so please wait on the line until the call is answered. In the unlikely event of reaching voicemail, please leave your name, number and a brief message advising that it is an urgent UKMPA call.

If necessary, the executive member has authority to engage the insurer's legal adviser.

Note that whilst a CHA is entitled to receive an Incident Report from you, any other report being prepared by you, or on your behalf for the UKMPA, your insurers or their appointed legal advisers, UNITE (e.g. The General Secretary or his official deputy for UNITE legal advisers), should remain strictly confidential and should not be disclosed or copied to anybody else.

To Summarise:

If you are placed under criminal caution (i.e. by the police); decline to comment until you have taken legal advice.

In the event that you are asked to provide a breath sample it is an offence under the Railways & Transport Safety Act 2003 to decline.

As explained in detail below, only a police officer or your CHA, under the terms of a contract you are party to, can demand that you participate in a breathalyser test.

Further advice

The Advice offered below was received from the insurer's legal adviser:

The [UKMPA member pilot] member is obliged under law to report and co-operate fully with his or her Harbour Master or Duty Harbour Master or the designated person for that CHA.

Should the member be summoned by the CHA to attend an interview; they are entitled, should they believe it appropriate, to be accompanied by a third party (preferably a colleague pilot). Any interview with the Harbour Master/CHA should be undertaken in private (save for the companion) and at no time should the interview be held in the presence of any other third party.

In the event that the MAIB become involved, they possess statutory powers and the member is legally obliged to co-operate with them at all times. The MAIB's authority is solely to gather all relevant facts of the incident, they do not possess the legal powers to prosecute.

Should the member be taken into custody under caution, he or she is under no obligation to answer any questions and should seek immediate legal representation as is their right. In the event of an incident in Scotland the procedure remains exactly as above. In the event of loss of life, generally the Procurator Fiscal attends and takes full control of the scene of incident and the police will act upon instructions given by the PF. Again, the member is not obliged to answer any questions and should seek legal representation.

Should a member be taken into custody, I recommend legal advisors be notified immediately [via a UKMPA executive member as advised on 0800 6446 999] and if necessity dictates, he will arrange to travel to that member as the legal representation. They will, more than likely, contact Ken Pound to discuss the incident in order to determine whether insurers are likely to become involved but it must also be noted that the incident may not necessarily trigger a claim under the policy of insurance and therefore legal costs may not be recoverable. [It is thus important that legal support is not contacted directly by members for assistance].

Breath-testing by a police-officer following any marine accident is now enforceable as it is for road-traffic matters by operation of various statutory provisions including the Merchant Shipping Act 1995 and the Railways and Transport Safety Act 2003. It would therefore be highly inadvisable for a pilot to decline to take a breath test at any time if required to do so by a police officer. Random breath-testing may also be required by a CHA, either as a term of contract or even as a term of continued authorisation. Refusal to take a test if requested by a CHA appears highly likely to give rise to an internal disciplinary charge, at least.

Reporting and Interviewing

A pilot should not decline to speak to his CHA, if asked. He should make his report to his CHA in the usual way; and he should be prepared to discuss his report fully in any interview with his CHA.

Like-wise, participation in an interview with the Marine Accident Investigation Branch is compulsory. It is a criminal offence to decline to provide information requested by MAIB.

BY CONTRAST – It is highly inadvisable to submit to any police interview, particularly if warned that the interview is to be conducted “under caution” per the terms of the Police and Criminal Evidence Act 1984.

The whole point of the official caution is to warn that “you do not have to say anything”. Nobody has any obligation in any circumstance to assist the police in making out a prosecution case against himself.

In the somewhat unusual circumstances of pilotage law it is highly unlikely that any police officer would appreciate any of the protective aspects of the laws of pilotage. For that reason, a pilot is very much better advised to heed the words of the caution; and simply decline to comment.

The Maritime and Coastguard Agency is prosecuting body in the same way as the police force. Any requests for an interview under caution by the MCA should also be declined, for the same reason.

It is hoped that this explanation of procedures and your rights will be of assistance if you are unfortunate enough to be involved in any incident.

Incident Report Forms

It is suggested that a statement is inserted in reports filed to CHA's along the lines of below, to try and ensure that a CHA does not disclose contents to a third party where there is no separate legal duty:

The contents of this Incident Form are provided to the Port / Harbour Authority in accordance with local and statutory reporting obligations and shall only be disclosed to persons to whom the Port / Harbour Authority owes a legal duty of disclosure (unless the pilot has given their prior consent to such disclosure) and then in accordance with The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, which shall apply at all times.

There needs to be a balance between pilots complying with their own legal obligations and facilitating other Port or Harbour Authorities from complying with their statutory reporting obligations on the one hand, and trying to protect their position on the other.

NOTE THAT ALL INCIDENT REPORT FORMS SHOULD BE SENT TO:

Mr. Ken Pound, Tysers, 71 Fenchurch Street, London, EC3M 4BS.

Direct Tel: 0207 621 8260

Email: ken.pound@tysers.com

with copy to ian.storm@circleinsurance.co.uk

Yours faithfully,



Mike Morris
Chairman