THE PILOT

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Editorial

I am writing this with a heavy heart having just learned the decision of the tribunal panel who, after one year of meetings and deliberations have declared that "The unanimous decision of the Tribunal is that the applicants were not employees of the respondent." A simple and unemotional statement that fails to impart the full implications for the members of HPL who are now back in the position imposed upon them in January 2002 when ABP stripped them of their authorisations. The question now is what can they do next? There are still two avenues and they are; an appeal against the tribunal hearing and taking the case to the European Court to challenge ABP's actions against their rights as "workers". Both of these courses of action are dependent upon the support of the T&G who have fully financed the tribunal appeal up until now because of its potential importance for all contract workers. At the time of writing it is not known whether or not the T&G will be able to take the matter forward but there are important lessons for all pilots to be gained from this case and I have therefore written this quarter's feature around the tribunal's findings.

Regardless of the tribunal's findings nothing has altered the fact that ABP's actions introduced a significant and avoidable risk to shipping on the Humber and the fragile ecology of the local environment. This dispute has revealed the woeful inadequacies of Statutory bodies in this country to take action to prevent commercial interests from jeopardising safety. It appears they can only react after a disaster has occurred and then, having indulged in the exercise of "making the right noises" to appease an outraged public, usually manage to quietly bury the matter in ineffective bureaucratic waffle! On a lighter note for HPL members, whilst many have taken retirement the rest have found that their reputation has enabled them to easily find alternative employment and their morale and resilience is high. Whatever the future may bring for those HPL members who made the courageous stand against the erosion of their professional status they will receive the support of the UKMPA and we wish them well.

As some of you may already be aware, our secretary in London, Davina Connor, made a sudden decision to seek her fortune in Hong Kong and left at the end of February. Monica Brown, who has been with the T&G for seven years, has taken over from Davina and has promised me a full picture profile for the July issue! I am sure that you will join me in welcoming her to the "hot seat" of pilotage!

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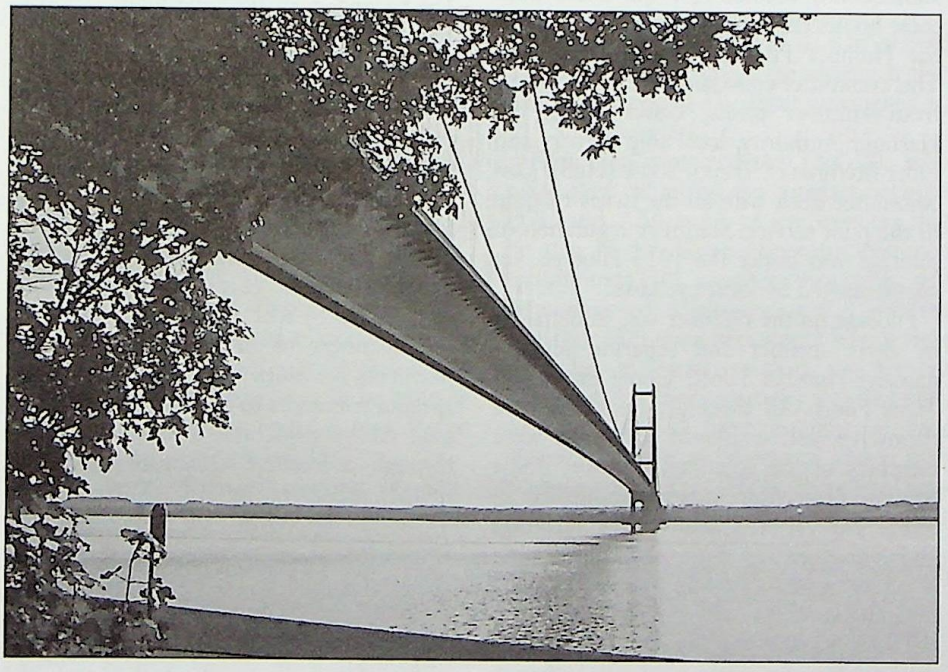
HPL LOSE TRIBUNAL HEARING

The ruling of the employment tribunal has come as a bitter blow to the members of Humber Pilots Ltd (HPL) who have bravely withstood over one year of uncertainty, an uncertainty enhanced by the knowledge that the DfT had openly sided with ABP and by the stance of the MCA who indicated that they were powerless to be pro-active in safety matters! At the time of writing I do not know if the T&G will consider and appeal but whatever happens in the future I feel that it is important for all pilots, especially those who are self employed, to be aware of the reasoning used by the Tribunal contained within the 66 pages of judgment. I must stress that this is my personal interpretation so, not being a lawyer, I may have unintentionally got it slightly wrong. In any event the main legal point that seems to jump out of the judgment is that the law is far from clear on this matter and a different panel using the same case law could well find in favour of HPL!!



In This Issue

BACKGROUND

Whilst many of you who have been following this case will be aware of the events leading up to the de-authorisation of HPL members, the introduction to the tribunal ruling provides a useful history of pilotage administration to the present and I feel that this may help in obtaining a general overview of the relationship between HPL and ABP and how it eventually led to such a devastating dispute.

Regulation of pilotage on the Humber goes back to the Humber Pilot Act of 1800 which created a pilotage authority for the Humber and established a body of Commissioners for executing powers. In 1907 the Humber conservancy Board became the Pilotage Authority and this body remained in charge until 1968 when the British Transport Docks Board became the Pilotage Authority under the Humber Harbour Reorganisation Scheme 1966. (An interesting legal point concerning this transfer appears on page 5). This Authority remained in place when the BTDB subsequently became ABP but under both these bodies the Authority was delegated to the Humber Pilotage Committee (HPC). This committee consisted of representatives from Humber pilots, Guild pilots, the Harbour Authority, local ship owners and Elder Brethren of Trinity house (Hull). This committee dealt with all the issues relating to the pilot service. Statutory regulation of pilotage was under the 1913 Pilotage Act supplemented by local bye-laws.

Pilotage on the Humber was undertaken by three distinct and separate services namely: Humber Pilots, Goole Pilots and Trent Pilots. All three groups considered themselves self employed and most were members of the voluntary Humber Pilots Mutual Protection Society established in 1882. The HPMPS held regular meetings and put forward proposals concerning pilotage matters to the HPC. HPMPS continued to exist until 1987.

The 1983 Pilotage Act created Pilotage districts and gave the Pilotage Authority full administration powers including those to license pilots and also to revoke or suspend licences along with the powers to make bye-laws. There was also the facility for pilots licensed by the authority to be employed by the Authority. In 1986, with the 1987 Pilotage Act pending, ABP met with HPMPS to discuss the implications of the Act. A working group of pilots was established and it was at this time that the employment status of Humber pilots was first discussed. The matter was raised at a meeting of pilots and put to a vote. Members voted unanimously against any proposals to be employed by ABP. The other outcome from these meetings was that the three separate pilot groups would amalgamate into a limited company called Spurn Pilots Ltd. (SPL). SPL set about establishing a set of rules based around the existing bye-laws and a new set of working rules to enshrine.

The 1987 Pilotage Act came into force on the 1st October 1988 and full powers of pilotage authority were transferred to ABP as the "Competent Harbour Authority" (CHA).

During the run up to the implementation date of the 1987 Act on the 1st October 1988 there were many meetings between the pilots and ABP management in order to tie in the pilots' responsibility to provide the service with ABP's responsibilities as CHA. Throughout all these negotiations it was understood by both parties that this agreement would be one of self employment for SPL members. On the 1st October 1988 the limited company Spurn Pilots Ltd became the service provider for pilotage under a contract to a sub company of ABP called Humber Pilotage (CHA) Ltd. This contract combined three different agreements namely:

The commercial agreement.
The Secondary or Working rules.
The authorisation.

The commercial agreement. Basically, under this agreement SPL undertook to provide a pilot for any vessel requiring one within the compulsory pilotage district. ABP undertook to provide and maintain the pilot cutters along with transport for pilots. This agreement also detailed how much of the pilotage revenue, which would be collected by ABP, would be passed on to the members of SPL along with other payments for work expenses. It also made specific references to the working rules and gave ABP considerable powers over pilots through a Pilotage Operations Manager (POM) employed by ABP. These powers included approval of any working agreement or amendments to it and the right to order a revision of the rules "...should it be considered necessary or desirable to do so". In addition to the inclusion of ABP's powers as the CHA over pilots authorisations this agreement also required pilots to report any incidents to the POM within 24hrs.

The Secondary agreement bound the individual members of SPL to the commercial agreement and recognized SPL as the body to undertake negotiations on behalf of SPL members. This secondary agreement also contained the full working rules which detailed such items as rostering, sickness, accidents, discipline etc.

No amendments to these secondary or working rules could be made without the consent of ABP.

The Authorisation for SPL members integrated the SPL member's right to pilot into the working rules by the following clause "An applicant to be authorised as a pilot within the Humber area shall agree to be bound by the following terms and conditions." There then follows a long list of terms and conditions but the first one is probably the most significant in that it states that an SPL pilot "..shall be under the supervision of the Pilotage Operations Manager or his deputy and, apart from the actual handling of vessels, he shall carry out the proper directions of the POM or his deputies". I personally find this integration of an authorisation into an agreement most unusual because an authorisation should just be a simple document recognising the fact that a pilot had met the criteria established by the authorisation Authority (in this case the CHA) to pilot a certain size of vessel within a specified district. It is an entirely separate document to an agreement to provide the service which, in the case of the Humber, was automatically entered into once a pilot became a member of SPL. He could only do this by gaining an authorisation!

I would be interested on legal feedback on this matter but there is a legal case which would seem to support this interpretation and that is the "Cavendish" case (Ocean Gas [Gibraltar] Ltd. V The Port of London Authority [1993]). The gas tanker *Cavendish* suffered damage as a result of a collision whilst under compulsory pilotage and the owners took the PLA (as employer of the pilot) to court for negligence of its employee. Ocean Gas lost that case on the basis that regardless of the employment status with the PLA the pilot, when on board a ship, carried out his professional duties under his authorisation as a servant of the ship owner. This was a significant test case concerning the liability of a CHA as an employer of pilots and the judge's ruling in that case is now recognised as the accepted interpretation in such cases.

On the Humber therefore, ABP appears to have had almost total control over the manner in which SPL members undertook pilotage operations and to all intents and purposes the agreement appears to be a contract of employment. This factor was not lost on our friends at the Inland Revenue and in January 1990 they informed SPL that for tax purposes "SPL members were either employees of SPL or SPL was a distributor of surplus funds upon which advance corporation tax and income tax was payable." As can be imagined this caused quite a stir amongst SPL members who replied that there was a mutual understanding with ABP that the pilots were self employed as allowed under the Pilotage Act 1987 and requested that the IR advise them as to how they could amend their agreement with ABP to formalise their self employed status. This proved to be insufficient and with the Inland Revenue threatening to make the matter a legal test case, SPL members contacted the UKPA legal advisors Rowe and Maw.

The IR submitted three pages of arguments to Rowe and Maw detailing their claim using several legal rulings in support of their case. Rowe and Maw responded by analysing each point and raising counter arguments as proof that SPL members were neither employees of SPL or ABP but were indeed self employed.

Again this reply covers several pages of arguments but the key points are:

- That the IR had recognised SPL members as self employed before the 1987 Pilotage Act and that nothing had arisen out of that Act to alter this status.
- That if no ships were piloted there would be no obligation for either ABP or SPL to pay SPL members.

Further to the on-going legal arguments SPL sought advice and agreed with ABP to amend the agreement to clarify the employment status. Rowe and Maw's legal arguments coupled with the amendments to the contract finally satisfied HM's Inspector of Taxes who wrote to SPL on the 19th December 1990 confirming that they were now satisfied as to the self employed status of SPL members.

In 1994 an SPL pilot Paul Hames left SPL and took up employment with Humber Pilotage (CHA) Ltd as the POM. Somewhat surprisingly this appointment led to a souring of relations between SPL and ABP and several weaknesses in the agreement became evident. In particular disciplinary action taken by Paul Hames against two HPL members led to a judicial review and a subsequent amendment, in December 1997, to the terms and conditions of authorisation relating to disciplinary procedures.

On 1st January 1998 Humber Pilotage (CHA) Ltd was closed down by ABP and ceased to trade. Its functions were transferred to the Harbourmaster's department and Paul Hames was appointed "Harbourmaster Humber".

In February 1998 further discord arose between ABP and SPL when their operations were moved from their long established offices at 50 Queen St. Hull to Portakabins in King George Dock. (*See Pilot 253, April 1998*)

22nd April 1999 SPL became Humber Pilots Ltd (HPL).

Relations between HPL and ABP continued to deteriorate and in February 2001 a failure to reach an agreement on payments by ABP to HPL under the contract resulted in HPL writing to ABP terminating their contract as follows "... We cannot agree with that decision on the ground that the sums to be remitted to HPL do not correspond to the amounts requested. Consequently, in accordance with sub clause 4(f), Humber Pilots Ltd. Hereby gives to Associated British Ports two months notice to terminate the aforementioned contract."

ABP took legal advice and in March 2001 replied to HPL declaring that the termination tendered by HPL was unlawful under clause 13 of the agreement that required either side to give 9 months notice for termination.

In April 2001 HPL withdrew the termination of contract letter written in February and wrote again giving the 9 months' termination but added on to the letter "We accept settlement of the rate review 2001 as detailed in (A2D) of our letter to ABP dated 19th February 2001. In previous years the agreement has normally been back dated to 1 January. We also look forward to the meeting that you have agreed will take place at a mutually convenient time during May."

ABP decided not to enter into any further agreements with HPL but accepted the termination notice and notified HPL that it would directly employ pilots at the end of the 9 month notice period on 26th January 2002 under section 3 of the 1987 pilotage Act.

The subsequent events have been well documented in *The Pilot* during the last two years but to briefly recap:

11th June 2001, ABP wrote to each HPL member confirming that their authorisation would be terminated with effect from 2359 hrs on 26th January 2002.

22nd June. ABP wrote to each HPL member inviting them to apply for a position as an employed pilot as of 27th January 2002. This letter detailed the number of pilots that would be sought along with salary and roster details. Reply was requested by 23rd July 2001.

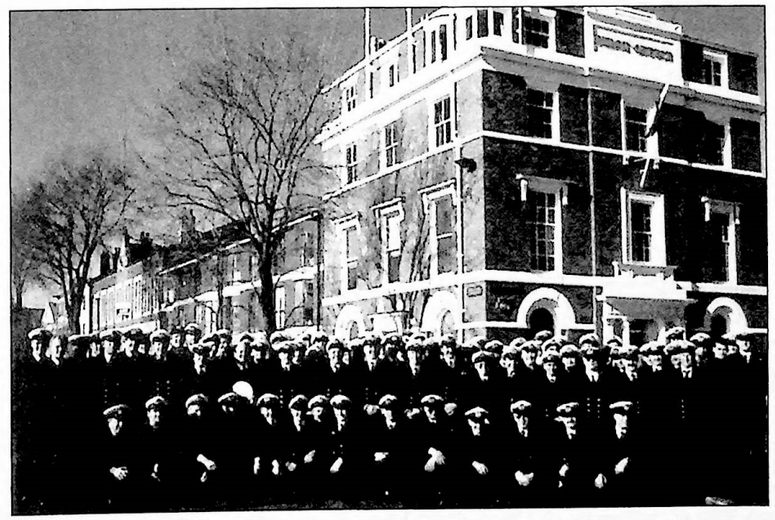
25th June. General meeting of HPL members. ABP's offer was analysed and compared to the existing terms and conditions for HPL members. It was evident that as well as losing their independence, there would not be vacancies for all HPL members and the proposed salary and leave levels would be considerably less than those currently enjoyed by HPL members. ABP's proposal was put to a vote and was rejected unanimously. This result was submitted to ABP along with a letter re-stating HPL's willingness to engage in constructive meetings to re-negotiate the contract. An extension of 1 month to the 23rd July deadline was requested.

ABP responded to the effect that it considered that any meetings would be unproductive and refusing to allow any extension to the deadline.

August 2001. No HPL members had applied to become as employed pilots with ABP and ABP sent a final letter to all HPL members advising them that they were now actively recruiting pilots for employment and that the available positions for ABP members were reducing. An application form was enclosed.

2nd October HPL wrote to ABP stating that they did not accept the approach that ABP had adopted. The letter was signed by all 137 HPL pilots.

HPL then contacted the T&GWU who when they examined the contract between HPL and ABP were of the opinion that because of the degree of control exercised by ABP over HPL members they might well be considered employees. If that was the case then HPL members would have a right to take industrial action to prevent dismissal. Another possibility was that HPL members would have a right to take industrial action as "workers" rather than "employees." The T&G therefore instigated ballot proceedings for industrial



Spurn pilots following eviction from their office on 23rd February 1998. Photo: Richmond Rigg

action of 1 month from the 6th November.

1st November ABP was granted an injunction against HPL thus preventing the strike.

November 2001. Dialogue between HPL and ABP solicitors sought to resolve the dispute with HPL members agreeing to employment if on similar terms to pilots employed by ABP in Southampton.

9th November 2001. ABP was informed that HPL members would be starting Employment tribunal hearings.

By the 23rd November ABP had recruited 70 new trainee pilots and negotiations between ABP and HPL broke down.

3rd December 2001. A court judgement revoked ABP's injunction on the basis that HPL members were engaged in a trade dispute as "workers" within the meaning of Section 296(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992.

23rd December 2001 HPL members commenced one month's strike action.

24th January 2002 HPL pilots returned to work but were refused access to the river by ABP.

2359, 26th January 2002, all HPL members had their authorisation to pilot on the Humber withdrawn.

The employment tribunal met in May 2002, October 2002, November 2002 and March 2003 and the analysis of the HPL status runs to 25 pages. This analysis goes into great detail as to the day to day management of the pilotage service and one crucial fact to emerge is that there was no grievance procedure that HPL could invoke with ABP.

THE LEGAL ARGUMENT

The key reasoning is contained within the legal arguments but, as was revealed in the 1990 case between the Inland Revenue and HPL, the interpretation of case law makes a firm ruling difficult. This was acknowledged in a separate 1990 case where Lord Griffiths stated that "....despite a plethora of authorities, the courts have not been able to devise a single case that will conclusively point to the distinction in all cases."

An "employee" is legally defined in the Employments Rights Act 1996 as "an individual who has entered into, or works under, a contract of employment."

A "contract of employment:" is defined as '... a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing."

So, that's cleared that one up!!

Usefully some clarification is applied by means of subjecting the status to four tests: Control, integration, economic reality and the multiple test.

Control Test: looks at whether the individual was under duty to obey orders, had control over working hours, was supervised as to the mode of working and provided their own equipment.

Integration: Looks at whether the person is integrated into the employers organisation by such things as occupational benefits scheme or a grievance/ disciplinary procedure.

Economic reality: Is the person who has engaged himself to perform the service performing them as a person in business or his own account.

Multiple Test: This is possibly the most important because it determines three conditions under which a contract of services exists:

- The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some service for his master.
- He agrees, expressly or implied, that in the performance of that service he will be subject to the other's control in sufficient degree to make that other master
- The other provisions of the contract are consistent with it being a contract of service.

Many legal case histories were examined by the panel and a few of these are worth including here.

- Concerning "mutuality of obligation" between an employer providing work and an employee accepting the work it is of relevance if there exists any notice requirements or whether a worker is free to leave at any time in favour of alternative work. If there is no mutuality then it is unlikely that a contact of employment exists.
- Payment of a wage or salary is an indicator of employment status. The right to fix his or her remuneration is supportive of self employment.
- Deduction of Income Tax and NI at source is supportive of employment
- Provision of sickness benefits is supportive of employment

The following case is probably the most important in the HPL ruling.

In the case of *Massey v Crown Life* the employed manager of a branch was advised by his accountant to become self employed. Crown Life agreed and he continued to provide the same service as an independent contractor and the Inland Revenue accepted his status as self employed. Some years later his contract was terminated. His claim for unfair dismissal was initially upheld but subsequently the Industrial Tribunal and the Employment Appeal Tribunal ruled that he was not an employee since was not working under a contract of employment. Lord Denning declared that the intention of the parties (in the Humber case both HPL and ABP were agreed that HPL members were self employed) is also a relevant factor. He stated that "the parties(to a contract) cannot alter the truth of that relationship by putting a different label on it."

He went on to state that "...if their relationship is ambiguous and is capable of being one or the other, then the parties can remove that ambiguity, by the very agreement itself which they make with one another. The agreement itself then becomes the best material from which to gather the true legal relationship between them."

This case obviously brings the amendment of the HPL contract in 1990 to satisfy the Inland revenue as to self employed status as the most relevant indicator as to employment status.

A similar ruling by Lord Hoffmann in a separate case underpins Lord Denning's interpretation.

Despite this indicator, the panel looked beyond the above rulings when examining the commercial agreement. In particular they made the following observations:

- That within the only written contractual document namely the authorisation, there was no reference to pilots being remunerated for pilotage acts by ABP. If there were no ships on the Humber then there would be no acts of pilotage and therefore no payments to HPL or the pilots. This occurred when the pilots were on strike.
- With respect to the intervention by the Harbourmaster the panel decided that these were justified by the statutory obligations of the CHA under the 1987 Pilotage Act. They therefore concluded that there was no "mutuality of obligation."
- The panel agreed that there was lack of clarity when applying the criteria of "control". Whilst acknowledging that ABP had some control over the work, they felt that on balance the practical control was in the hands of HPL and the Pilot Masters who allocated the pilots to ships.
- Of key importance in their ruling the panel had noted that historically, HPL members had fought to maintain their self employed status and had noted that "In conflict with the IR, legal advice was obtained and the pilots' legal advisors, in a very detailed and legal way, argued the case for the self employed status and independence of the pilots. Court action was taken to preserve that status and independence."

THE FUTURE

At the time of writing the T&G are looking into the ruling and I do not know whether or not there are grounds for appeal on the ruling or whether or not HPL members have grounds for a separate action against ABP. I personally feel that the manner in which HPL's authorisation to pilot ships was integrated into the contract to provide the service could be examined with respect to the Cavendish ruling and the powers of a CHA under the Pilotage Act to remove a pilot's authorisation. In the case of HPL they had a contractual dispute with ABP over payments for a service. What was never in doubt was their ability to pilot ships under their authorisation. If a self employed lorry driver ends his contract with a transport firm, that firm cannot remove his driving license! Are there grounds for action against ABP for exceeding their powers over authorisations? Comments on this from any lawyers amongst you would be most welcome.

Finally, I have received a fascinating letter from retired Swansea Pilot John Evans who held lengthy correspondence with lawyers and government in the 1960's concerning the transfer of pilotage powers by means of the Harbours Act where there is no provision within that act to transfer such powers which could only be done under the Pilotage Act. So was there an unlawful transfer of powers in 1968 and would it make any difference bearing in mind the transfer of powers under the 1987 Act? A good discussion point if nothing else. The following article is a précis of John's correspondence.

HUMBER 1968

Was there an unlawful transfer of pilotage powers?

Based on research by retired Swansea pilot John Evans

Having learned of the dispute between HPL and ABP, retired pilot John Evans submitted the following research which he felt could be of relevance to the dispute. As well as providing an interesting legal case it also gives an interesting insight into the history of 20th century pilotage legislation which I know that many pilots, myself included, were unaware.

Basis for the legal question

In 1968 as part of the then Labour government's policy for the nationalization of the UK ports industry it was decided to transfer pilotage authority powers on the Humber from the local Humber Conservancy Board (HCB) to the British Transport docks Board (BTDB) by means of the 1964 Harbours' Act. The legal argument is that the 1964 Harbours Act was not the correct legislation for transfer of pilotage powers which were incorporated into the 1913 Pilotage Act.

The 1913 Pilotage Act

This Act was introduced in order to incorporate the various local bye laws covering pilotage around the UK coast under the central authority of the Board of Trade. The act itself was largely based on a report submitted to the President of the BOT in 1912 which had found that there was *"...an absence of and disregard for any definite principle governing pilotage which had led to a chaotic condition of the law and a consequent uncertainty in its administration"*.

When moving the second reading of the pilotage bill in November 1912 the president of the BOT stated *"in future the pilotage system of this country will be governed by one General Act under which local pilotage orders may be made by the BOT and by local bye laws made by the local authorities which will have to be submitted to the BOT and which will follow the lines of a model code"*. The 1913 Act, passed overall responsibility for UK pilotage to the State.

The 1968 transfer of powers.

In 1966 the National Ports Council submitted a Harbour reorganisation Scheme for the Humber under the 1964 Harbours' Act to the Ministry of Transport who had now taken over responsibility for pilotage from the BOT. The Scheme included the transfer of pilotage powers from the HCB to the BTDB. At the time the HCB agreed to this transfer, but with legal reservations, stating in a letter to the MOT *"... while the Board agreed to raise no objection to the 1964 Harbour's Act being utilised for the purpose of transferring pilotage authority functions, they must nevertheless challenge the legality of utilising this measure to effect amendments to the pilotage orders and pilotage bylaws of a purely general nature which, like the question of delegation, stand to be dealt with under the provisions of the Pilotage Act 1913"*.

During the Parliamentary debates on the Harbour reorganisation scheme it was never disclosed that pilotage legislation was being deliberately ignored and the consultation did not include representations from the TGWU and the UKPA.

The final outcome was that although it was strictly unlawful to use the Harbours Act to transfer pilotage powers it was considered that the Humber represented a special case and that for ease of administration the 1964 Harbours Act provided an acceptable vehicle for the transfer.

Subsequent to the transfer, correspondence from the Department accepted that in principle the transfer should have been dealt with under the 1913 Pilotage Act but in the absence of any legal challenge from the Humber pilots it was satisfied that since the pilots had accepted the transfer then the transfer was lawful.

In 1982 John Evans wrote a letter to Lloyds List detailing reasons why UK pilots were considering strike action. In that letter John quotes from a 1968 Royal commission enquiry into pilotage in Canada resulting from a series of strikes by Canadian pilots. This enquiry made detailed references to pilots' status including *"pilots are educated responsible persons who should be treated as such"* and *"They are therefore experienced in the function of management and trained to take reasoned decisions. Such men will not be content with the dictates of authority, will resent arbitrary decisions and will refuse service when they are convinced that they are being mistreated..."* Perhaps most importantly the Commission found that one fundamental reason for pilots' discontent had been the *"climate of illegality that was the main cause of the chaotic and inefficient state of pilotage organisation and the loss of authority of those in charge"*. Further on in this detailed letter John made the valid observation that in the draft Bill (then being put before parliament) to consolidate pilotage legislation there was no reference to the 1964 Harbours Act. In conclusion John again quoted the Royal Commissions finding that *"the greatest single factor for undermining authority is disrespect for and disregard of the law, if the example comes from the very authority who is charged with ensuring that the law is respected"*. He closed by stating *"As a pilot I submit that on the evidence presented in this letter the same criticism can be made of the officials who in the past were responsible for supervising the UK pilotage legislation"*.

Although that was written over 20 years ago it is more than ever valid today where we have witnessed "officials" refusing to use their powers to control the actions of ABP Humber.

Whether or not this legal discrepancy could have any validity in the current Humber dispute is debatable since the 1987 Pilotage Act granted full powers over pilotage to the CHA. I believe that there is a case for ABP to answer concerning abuse of their power over withdrawing of authorisations over a contractual dispute. There is an important difference between a contract to provide that service and the exact circumstance in which a CHA may use their powers needs to be clarified in law.

PENSION NEWS

Aware that if there is not a pension crisis then there is at least a crisis in confidence in pensions, the Government has issued two consultation documents – a Green Paper, ***"Simplicity, Security and Choice: working and saving for retirement"*** and the Inland Revenue proposal, ***"Simplifying the taxation of pensions: increasing choice and flexibility for all"***.

GOVERNMENT GREEN PAPER

I make no apologies for re-addressing this issue. The Government consultation document proposes reform to pensions based on the message that we must save more and work longer. The main proposals of this document are:

Scheme Funding: Based on advice from the actuary the funding strategy of the scheme to be agreed between the employer and the trustees and set out in a Statement of Funding Principles (SoFP). It will be a scheme specific approach which will replace the Minimum Funding Requirement (MFR).

Contracting-out: Changing the Reference Test to make it less stringent.

Governance: Requirement that trustees ensure that at least one third of all trustees are member nominated.

Internal Disputes Procedure: Schemes able to chose whether their published procedure consists of one or two stages.

Protection - Employees: Proposes increased protection for members benefits in which solvent employers are liable to make good any deficit.

Proposes to modify the statutory priority order on wind up.

Promotion of Pensions: Government seeking views on whether the two year qualifying period should be removed with immediate vesting of pension rights

State Pension Age: The age will remain at 65, but proposes greater incentives to encourage deferment of receipt of state pension.

New Kind of Regulator (NKR): A pro-active regulator to replace the Occupational Pensions Regulatory Authority (OPRA)

Greater Flexibility for Schemes: Giving schemes more freedom to amend accrued rights, but requiring employers to consult employees before changing schemes for future services.

INLAND REVENUE PROPOSALS

The complicated Inland Revenue Limits have long been a problem for those administering pension schemes as the rules simply do not apply to most pension scheme members. In a radical move the Inland Revenue is now proposing that these limits are swept away and replaced with a simple lifetime limit and an annual contribution limit. The main proposals are:

Lifetime Limit: Consultation suggests this might be set at £1.4m. For the purpose of testing benefits against the limits a final salary scheme will be valued by reference to conversion tables published by the Inland Revenue. Benefits in excess of the lifetime limit will be subject to a 33% "recovery charge". After carrying out the test and any recovery charge deducted a lump sum not exceeding 25% of the value of the remaining benefit may be paid.

Pension benefits from other sources will need to be included when calculating whether a recovery charge will apply. Benefits from a particular source will only be tested once.

Annual Limit: Consultation suggests that the annual level of tax-relievable benefit or contribution might be set at £200,000 indexed in line with price inflation. Assessment of whether the level has been breached will be undertaken by the taxpayer.

"A-Day" and the Transition: "A-Day" could be as early as April 2004. If at this date a member's fund exceeds £1.4m it can be protected against the recovery charge on the proviso that the benefit accrued was within previous Inland Revenue regime limits prior to "A-day". As well as the pension the tax-free lump sum may be protected.

Pension Benefits: There will no longer be a Revenue requirement for scheme's to include a normal retirement age. However, the earliest a person may be paid from will increase to age 55 from 2010. The Revenue also proposes to keep the requirement that benefits must be brought into payment by age 75.

The move to one tax regime from eight will greatly simplify the administrative checks needed for all members. But even if the Green Paper and Inland Revenue document succeed in removing some of the burdens and routine work from administrators they will also introduce new tasks and new areas of complexity. As they say the devil is in the detail.

STATE ENTITLEMENT

From April 2003 the basic state pension payable to a man at age 65 and a woman at age 60 will be £77.45 per week if you have paid full National Insurance Contributions (NICs) for most of your working life. For pensioner couples the pension payable is £123.80 per week. This is an increase of 2.5%.

Women may claim the dependent wife's pension of £46.35 per week from April 2003 but only if their husband has reached the age of 65. Women who are under state pension age may be able to claim if they are not earning more than £54.65 per week.

The state pension age is set to rise for women to age 65 starting from 2010 and will be phased in over a 10 year period.

Forecasts of the benefit you will be entitled to can be obtained via a Form BR19 available from the Benefits Agency. A pensions forecast will also tell you if you are eligible for an additional pension under the State Earnings Related Pension Scheme (Serps) which started in 1978 and was replaced in 2002 by the Second State Pension.

If you have low income overall and savings of less than £12,000 you may be eligible to a top-up through income support. From April 2003 the Minimum Income Guarantee (MIG) is £102.10 for single pensioners and £155.80 for couples, however as this is means tested it must be claimed as it is not paid automatically.

From October 2003 a new element of the MIG will be introduced which is aimed at rewarding people who have saved towards their retirement with a top-up. This will be known as the new Pensioner Credit and it is estimated that about 5 million pensioners will be entitled to it. To assess your eligibility you will be required to complete a means tested form.

INCOME TAX ALLOWANCES

From April 2003, the personal allowances will be:

£4615 for people under 65
(i.e. frozen at the current level)

£6,610 for people age 65-74

£6,720 for people age 75 and over.

I hope that by the time you read this the winter blues will be far behind us and a long hot summer stretching ahead. Have a good one.

Debbie Marten
debbie@pnpf.co.uk

Retirements

November 2002 - January 2003

AE Cooke	**Manchester**	***Dec***
VF Moorman	**Cowes**	***Nov***
B Watson	**Seaham**	***Dec***

EU DIRECTIVE

Pilotage removed?

Very good news, but with some question marks, has emerged from Brussels. The following is the press release from Fairplay magazine *dated 13/03/03*

MARITIME pilotage services in Europe are one significant step closer to retaining their special, non-commercial status following an amendment to the European ports directive on Tuesday.

By a large majority, the European parliament on Tuesday approved an amendment removing maritime pilotage from the directive, as urged by the European Maritime Pilots' Association.

"*In view of the special importance of pilotage service for the safety of maritime traffic, thus for the protection of the environment in particularly vulnerable regions, each member state should be free to adopt its own national rules for pilotage services which take into account the specific circumstances of each port,*" the parliament report stated. This is the second time the Strasbourg body has rejected the European Commission position and removed pilotage from the directive.

The entire ports directive is now expected to enter the EU's conciliation procedure, which will attempt to bring together the positions of the commission, parliament and Council of Ministers.

"*We are happy, but it is too early to sing victory. This is, however, a significant step forward,*" said Gianfranco Gasperini, European Maritime Pilots' Association president. "*Even if pilotage eventually stays inside the directive, we want the industry to be regulated according to what the parliament said, which is that pilots have a special role in maintaining maritime safety.*"

The association had argued that forcing pilots to compete on a commercial basis - as shipowners have urged - would compromise safety standards and act as a disincentive to invest and train.

Rather than act in the interest of the public, pilots would become dependent upon the commercial relationships with their clients, the Rome-based association said. "*If a pilot is neutral he can denounce deficiencies and incidents with no qualms,*" Mr Gasperini said last year. "*Within a competitive industry this would not happen.*"

Comments this week by EU transport commissioner Loyola de Palacio were interpreted as a softening of the commission position towards pilotage and the ports directive as a whole. Mrs de Palacio talked of "regulated liberalisation" as opposed to "authentic liberalisation" as port workers protested outside the Parliament building in Strasbourg.

The conciliation procedure is expected to last three months.

The International Transport Workers' Federation yesterday hailed the parliament's decision as "a major step forward".

However, it was unhappy that the way was still open for crews to handle cargo, and pledged to continue campaigning on that aspect.

AIS LATEST

As I predicted, the introduction of AIS is proceeding apace with the agenda having been firmly hijacked by the USA and their need to track the movements of all vessels in the interests of national security!

The one important feature demanded by ships' masters was that AIS would be under their control and permit them to switch it off in the interests of their own safety for example when ships are transiting high risk pirate seas. IMO have now agreed that a requirement of AIS is that it will remain on at all times. The relevant amendment clause to SOLAS has been included in Chapter V as regulation 19 which states the following:

Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.

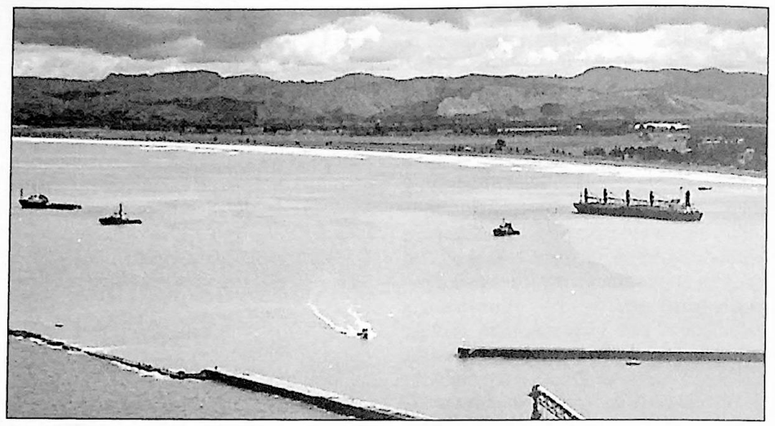
JODY F MILLENNIUM: THE OFFICIAL REPORT

Your eagle-eyed editor identified this grounding of the log carrier Jody F. Millennium *in the small New Zealand port of Gisborne last year as a potential landmark case which would analyse the relationship between a harbour authority and its service providers of pilotage, tugs, mooring gangs etc. The New Zealand Maritime Safety Authority (NZMSA) official report into the grounding was published in March and although it has determined that the weather was the direct cause of the grounding it cites "serious deficiencies in the way the pilot, the ship's master and Port Gisborne operated."*

Following this article there is a letter from Ian Walters raising very valid points challenging my initial opinion that this case would underpin the Albatros *case which condemned the "short landing" of a pilot within a compulsory district due to adverse conditions. Following the publication of this report it will be interesting to see whether or not the MAIB will continue to take a relaxed view on short landing in parts where it is "common practice". The* Jody *report is quite clear on the practice stating:* "Conditions on the night may have prevented the pilot from disembarking to the pilot boat thereby requiring him to remain on board until conditions eased. If that had occurred, then so be it. There are numerous precedents for pilots being over carried to a vessel's next port of call when conditions have prevented the pilot from disembarking the vessel on completion of the pilotage".

There are also detailed recommendations as to how a harbour authority should exercise its statutory "duty of care" to port users.

The report runs to 94 pages so I have focussed on the pilotage aspect for this article but the full text is available on the NZMSA website at **www.msa.govt.nz/accidents/gettingreports.htm** It is well worth reading since in my opinion the management of the port of Gisborne provides a copybook example of how a port should not be run along with damning evidence as to how the deregulation and contracting out of port services will inevitably lead to an erosion of safety parameters.



Background

On 6th February 2002, during a storm, heavy swells entered the port of Gisborne where *Jody F Millennium* was loading logs. With the vessel having already parted several moorings and surging dangerously in the 5 metre swells, the pilot decided that the safest course of action would be for the ship to sail. Having unberthed the vessel the pilot disembarked within the port leaving the vessel to transit the compulsory pilotage area of the approach channel unpiloted, albeit with the pilot monitoring the passage from the pilot cutter. The vessel subsequently grounded, lost power and was driven ashore by the storm. The vessel remained stranded for 18 days and leaked 25 tonnes of heavy fuel oil into Poverty Bay. The owners of the *Jody F Millennium* are now suing Port Gisborne and the Gisborne District Council for NZ$23m (US$12.49m) arising from salvage, towage, repairs and oil-spill clean-up bills. The MSA said a number of the recommendations centre on the positions of pilot and harbour master in Gisborne, where the report identifies insufficient availability of resources as a key failing. As a result of this claim Gisborne's port was sold to the Eastland Energy Community Trust in an effort to separate the port's continuing operation from any litigation.

The Port:

The port was owned by Gisborne District Council (GDC) with the management being provided by Port Gisborne Ltd (PGL), whose directors were members of GDC. Gisborne is known as one of the "surge ports" of New Zealand where certain conditions result in large swells entering the port. Port operations are contracted out to Adsteam Port Services Ltd (APSL) who in turn sub contract the mooring services to another company Eastland Mooring services. The report found that the contract with APSL was drawn up *"with little reference to operational and safety responsibilities within the port"* and once the contract was in place *"it failed to maintain adequate superintendence of the safe operation of the port"*.

The Harbour Master:

Prior to deregulation of NZ ports in 1998 there had been a full time harbourmaster/pilot at Gisborne. The contracting out of services in 1999 led to a dispute between this previous harbour master and the port with the official report noting the following: *"The now ex HM had a fixed term contract with Port Gisborne Ltd. (PGL) in relation to pilotage. PGL ceased employing him in January 1999. Subsequently, he brought proceedings against PGL in the Employment Tribunal which subsequently ordered PGL to pay him lost earnings and compensation totalling approximately NZD$120,000. Even though PGL had ceased offering him the pilotage work, he continued to serve as the HM for GDC until 28 February 2001, when he retired"*. The position of HM then remained vacant until a new HM was appointed in September 2001. This meant that there was no harbourmaster for Gisborne for over 6 months in 2001. Even when appointed, the new HM was employed on a part time basis since he was actually the full time HM for the port of Napier and in the five moths between his appointment and the *Jody* grounding his involvement with the port amounted to a mere 15 hours! The report comments on this *"As commercial operators of the port, Port Gisborne Limited should have raised objection to Gisborne District Council's (its major shareholder) failure to ensure that the Harbourmaster function was adequately fulfiled, rather than by way of a nominal appointment of an absentee functionary as actually occurred"*.

The Pilot:

The Gisborne pilot was 57 years old and was an experienced pilot having been piloting in New Zealand for 24 years. Prior to becoming the pilot at Gisborne he had been a senior pilot at Napier until 1996 when he returned to sea. In January 1999 he commenced training as a Gisborne Pilot under the ex Harbourmaster, (at that time still the incumbent Pilot and Regional Harbourmaster). However, the ex HM/pilot would only allow the Pilot on board vessels as an observer and he was not given formal training. This basic training was curtailed due to the aforementioned dispute. The Pilot subsequently completed his training under the guidance of the Relief Pilot for the port of Gisborne. The Pilot completed approximately 11 pilotage operations during his training period prior to examination by the Training/Relief Pilot and the General Manager of APSL (the pilot's employer and line manager). The approval of the Pilot's Licence was the subject of a special meeting of the GDC where the council ratified the application and the Pilot was granted a full Pilot's Licence for the port of Gisborne. This licensing procedure was technically in breach of MSA procedures and a complaint was lodged which resulted in the MSA writing a strong letter of condem-nation to PGL. The licence however was not revoked.

During his three years at Gisborne, the Pilot had conducted about 650 pilotage operations and *"had the opportunity to observe and experience the characteristics of the port, such as swell, surge and other matters pertinent to the pilotage of vessels"*.

In addition to his pilotage duties, the Pilot's contract with APSL stated that his job title was that of "Pilot/Manager" Whilst the Pilot's contract contained that title, the contract contained no job description or schedule of responsibilities.

Once he commenced work at Gisborne the Pilot found that he was actually responsible for all port operations including the role of harbourmaster.

As a consequence, in his three years as the Pilot at Gisborne, the Pilot had taken just two weeks leave and at the time of the casualty he had 70 days of leave owing. Although it was acknowledged that a relief pilot was required at Gisborne this matter was not accorded sufficient priority by APSL since there was difficulty in finding a suitable candidate. Eventually a Pilot at the port of Napier agreed to fill the position. APSL took the view that the Pilot was able to rest between pilotage movements. The MSA found that this was not an adequate substitute for regular leave, especially given the large number of additional administrative duties he was required to perform and states that *"APSL failed to provide a structured system of relief pilots who would be available when the Pilot was on leave, ill, or otherwise unavailable. This placed unacceptable pressure upon the Pilot and breached APSL's obligation as a good employer"*.

It appears that in practice the port was effectively run solely by the pilot!

Dredged depth in approach channel:

Prior to arrival off Gisborne the Master had expressed concern about the channel depth. This was on the basis of information he had obtained from the vessel's copy of the *New Zealand Pilot, NP 51*, published in 1987. This Pilot book advised mariners that the controlling depth of water in the entrance channel to Gisborne was only 8.1 metres.

However, the latest edition of the *New Zealand Pilot* published in 2001 (which was not on board the vessel), and which was current at the time of the casualty, stated that the controlling depth was 10.5 metres. This claimed increase in depth resulted from a capital dredging programme undertaken on the instructions of Port Gisborne Ltd (PGL) and commenced in 1999

Before *Jody F Millennium* arrived in W New Zealand, the voyage charterers, submitted a stowage plan to the Master from which he calculated the maximum draught of the vessel to be 10.4 metres on departure from Gisborne. However the voyage charterer's agent based in Gisborne, told the Master that the maximum permissible draught on departure from Gisborne would be 10.2 metres.

The current official New Zealand navigational chart for Gisborne, was published in April 1989 and reprinted in January 1999. The copy on board the vessel was current, corrected to date and showed a least depth of 8.6 metres in the entrance channel on the leading line transit. Bearing this conflicting information it was hardly surprising that the master was concerned!

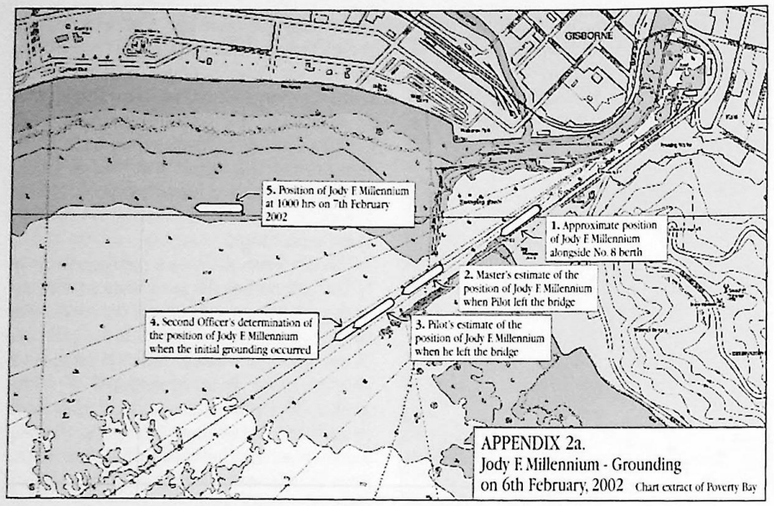
These concerns were raised with the pilot on the inward passage. The pilot advised the Master that based on his latest information and personal observations the minimum channel depth was 10.2 metres. The Master was then satisfied with this depth and decided that he would load the vessel to a draft of 10.16 metres.

It was stipulated in the contract between PGL and Adsteam Port Services Ltd (APSL), that PGL had the responsibility for maintaining the port facilities and PGL was therefore responsible for implementing hydrographic surveys fundamental to the safe operation of any port. The last survey of the entrance channel was undertaken about six months before the casualty. That survey showed several areas where the soundings were less than 10 metres with a minimum 9.7 metres being found. This survey was not passed to the Pilot by PGL and although maintenance dredging was undertaken no post dredge survey was undertaken to determine what depths had been attained. The Pilot had approached both PGL and the (absentee) Harbourmaster on a number of occasions and requested an up to date survey of the entrance channel but nothing was done.

The Chief Executive Officer of PGL was of the opinion that the Pilot should have taken the pilot boat out and sounded the channel with the equipment available namely, an echo sounder without heave compensation and without instrumentation to determine the vessel's position with DGPS!! The MSA investigators were of the opinion that this would not have provided the necessary degree of accuracy.

The Grounding

The 6th February was a public holiday in New Zealand but the pilot went to the port in the morning to check on the loading of the *Jody* and another vessel due to sail later in the day. The weather forecast provided a gale warning with anticipated 4 metre swells. The pilot was satisfied that such conditions were not excessive, having experienced similar during his time at the port. It was in the afternoon that the *Jody* started surging and following the parting some moorings the mooring company called the pilot who took charge of the situation and ordered the two tugs to come and push up on the two vessels whilst additional shore moorings were run. Being astern of the *Jody* the second vessel was experiencing less surge and the second tug was released from that vessel to assist with the *Jody*. Despite the tug assistance the Jody continued to surge and cargo operations were suspended at around 1500. By 1700 the weather seemed to be easing and the tugs were stood down but with the *Jody* still surging loading was not resumed. At 1900 the second vessel had completed loading and the pilot unberthed her without difficulty using one of the tugs. With the agreement of the Master he disembarked once the vessel was clear of the berth, leaving the Master to navigate the approach channel alone which he achieved successfully. The conditions deteriorated again and by 2100 the *Jody* had parted 8 moorings and the pilot was advised by the mooring gang that there was only one spare shore mooring left. The wind had increased to the extent that spray was being driven over the breakwater and the gang complained to their management and the pilot that it was now too dangerous to continue trying to effect a safe mooring. During all this time there had been no contact between the pilot and Master who was receiving information from his agent via mobile phone. The pilot now advised the agent of the situation and decided to arrange for the *Jody* sail at 2200. Although the vessel had not completed cargo the master accepted the decision to sail because he assumed that the instruction was from the port authority. The pilot checked the tide gauge and despite the swells estimated the height of tide to be 0.8m above datum (slightly deeper than the 0.65 metres predicted. With the vessel's draft having been read at 9.5 metres this would provide a static UKC of 1.5 metres based on the



APPENDIX 2a.
Jody F Millennium - Grounding on 6th February, 2002 Chart extract of Poverty Bay

depth of 10.2 metres used by the pilot. The vessel duly unberthed at 2200. Once clear of the berth the pilot pointed out the leading marks to the Master and advised him that the course on the leading marks was 234 (T). The wind was estimated to be southerly at around 30 kts and the swell was estimated at 4 -5 metres. Once the pilot had disembarked, the vessel's speed was estimated to be around 4-5 kts and the Master conned the vessel from the centre of the bridge, ensuring that the vessel stayed on a heading of 234 degrees. He did not go onto the bridge wing to check the leading marks. About two minutes after the pilot had left, the vessel was hit by a large swell causing her to roll heavily. The vessel grounded and the ships head fell away onto a westerly heading. Subsequent calculations revealed that using the actual channel depth of 9.7 metres (confirmed by a post grounding survey) and the 0.8m rise of tide, the vessel would only have had to roll 4 degrees to ground on the bilge keels. The Master dropped both anchors but both cables parted and during the next few hours the vessel was driven further ashore. With seas now breaking over the deck the conditions were too difficult for the tugs to assist and they returned to port. Jody was eventually refloated 18 days later after part discharge of the cargo. Bottom damage was significant and with no dry dock in New Zealand the vessel was towed to Japan after discharging the remaining cargo at Tauranga. The vessel returned to service on 25th June 2002.

Failures

Interestingly the NZMSA used the UK Port Marine Safety Code as a basis for their investigation into procedures in the port. This coupled with "best practice" criteria used in other NZ ports was used to draw up a comparison list of 22 procedural systems. The ports of Nelson, Napier, New Plymouth and Timaru all scored above 20 but Gisborne managed a mere 4! The report makes the following somewhat damning statement: *"There was a total absence of any structured written operational plans or risk management contingencies for the safe operation of the port of Gisborne."*

It concludes that there should have been written procedures relating to the following port operations:

- Pilotage procedures
- Weather limiting parameters
- Contingency plans (e.g. in the event of the onset of heavy surge conditions)
- Hazard identification (e.g. parting moorings)
- Maintenance/repair procedures
- Mooring plans for different types/sizes of vessel
- Minimum UKC criteria
- The provision of up to date hydrographic survey data

Basically the port was run without any formal structure and with the HM being based three hours away he was effectively useless and was not advised of the grounding until some hours after it had occurred!

The pilot actually took on responsibilities outside his job description. Whilst he could have stayed happily at home until called in to pilot the ship, having taken charge of the situation he was critisised for not following "best practice" procedures. In particular the report focussed on the lack of a formal passage plan. He was condemned for disembarking within the compulsory pilotage district.

Recommendations:

That GPL undertake a Formal Risk Assessment covering all the operational aspects of the port and to include weather and swell monitoring to establish UKC parameters for the port.

APSL and the Pilot to provide an adequate passage plan with formal operational parameters. The form of passage plan given by the Pilot to the Master for the vessel's inward passage was seriously deficient. No passage plan was given to the Master for the vessel's outward passage.

The authority is to severely censure the pilot for disembarking the vessel too early, leaving the ship's Korean master to negotiate alone the 0.8 nautical mile shipping channel to deep water.

The Gisborne District Council was criticised for employing a harbour master on an "as required" basis. "That gave him neither effective supervision of navigational safety within the port nor availability in an emergency," said the investigators. These conditions, the report said, prevented *Jody F. Millennium* from safely remaining alongside her berth. This failure has been underlined by a subsequent and unrelated incident where the HM was unable to be contacted because he was away from Napier in an area outside mobile phone coverage.

Actual Cause

The vessel departed the harbour with inadequate under-keel clearance for the conditions then prevailing. Consequently the vessel grounded shortly after clearing the entrance to the harbour by sea and swell conditions that were reported by some long-serving port employees, to be the worst they had ever experienced.

The Court Case

Gisborne District Council has filed a statement of defence denying any liability in the stranding of *Jody F. Millennium*. The Chief executive stated *"It is our position that the council acted appropriately in the circumstances and denies liability. The council rejects allegations that the grounding of the vessel was caused by the failure of the council to regulate safety standards at the port and that the council was in breach of any duty of care to the vessel owners since the damage to the vessel was caused by unforeseeable sea and weather conditions and the actions of other parties. We will actively defend this action both in the interests of Gisborne ratepayers and the council's reputation."*

Initial reactions from some observers are that it was a major storm that had been well forecast during the previous three days and since the "other parties" were appointed by contract to the Gisborne District Council, the owners of the port, it will be difficult for Gisborne district council to defend the case.

Thanks to all those of you who have sent me newspaper cuttings and other information that have helped me to keep up to date with this story.

JCB

LETTER

I read with interest your update on the *Jody F. Millennium* incident (*The Pilot, Jan 2003*). If, as the leaked report suggests, the pilot is "severely censured" for dereliction of duty, is it now clear that pilots must stop the practice of disembarking outbound vessels while within compulsory pilotage areas? I believe this is not necessarily the case. The report's findings may be along the lines of those for the *Albatros* grounding but consideration should also be given to the report following the *Dole America* incident.

You will remember that the *Dole America*, a refrigerated cargo vessel, collided with Nab Tower while outbound from Portsmouth in November 1999. This was another classic example of a ship getting into difficulties after a pilot had disembarked while within the pilotage area but in this case, the pilot was not found to be in the wrong. It could be argued that technically both the pilot and the master had committed an offense as they had not complied with harbour authority directions. However, early disembarkation was "common practice" in the port so, quite rightly, the MAIB levelled no criticism at the pilot (indeed, he was praised for his later efforts in saving the ship from foundering). Strangely, however, the harbour authority was not criticised either!

Competent Harbour Authorities have the powers to introduce compulsory pilotage areas but only in the "interests of safety". It has to follow that if a compulsory pilotage vessel proceeds anywhere within the compulsory pilotage area then, in the view of the CHA, it is doing so in an unsafe manner unless an authorised pilot or a valid PEC holder has navigational charge of the vessel. In the *Dole America* case this must surely indicate an inconsistency in the port's procedures as the authority would appear to condone, as "common practice", ships proceeding in an unsafe manner in certain areas under its jurisdiction. Had it been safe for the *Dole America* to proceed without a pilot or PEC holder, then the CHA would not have the powers to call this area a compulsory pilotage area for that ship. Curiously, there is no evidence of the MAIB addressing this anomaly during their investigation or of their speculating as to whether the incident would have occurred had the pilot remained on board until the vessel reached the compulsory pilotage area limits. This was disappointing, as it would have helped greatly in bringing some clarity to this subject in good time for the introduction of the Port Marine Safety Code.

I e-mailed the MAIB on this incident and they replied:-

"As stated in the report, it was common practice under certain conditions for the pilot to disembark at New Grounds Buoy. The MAIB could see nothing wrong with this as long as it was agreed in advance and the appropriate changes were made to passage planning and the bridge was appropriately manned. The position is within the Compulsory Pilotage Area but for reasons stated above the MAIB were not too concerned with this. (On the question of the master/pilot committing an offense) *It would be inappropriate for us to comment on a regulatory issue not covered in the investigation report."*

So there you have it – clear as mud. It seems that in this country, any pilot who, with the agreement of the master, wishes to disembark an outbound ship while within a compulsory pilotage area, is in the clear, providing he can show it is also with the approval of the CHA (even though this may seem a bit contradictory). An alternative would be to get on the pilot boat, head for home with fingers crossed and hope that the ship makes it to sea in one piece – most of them do.

Iain Waters, Orkney Pilot

High speed Craft:

Pilots should be aware of the MAIB investigation into wash damage from the HSC Portsmouth Express *which resulted in several members of the public being injured.*

Safety Bulletin 4/2002 is for the attention of all companies who operate HSC, and all port authorities with pilots who have to deal with HSC movements. The bulletin concerns Passage Plan Risk Assessments and training in relation to the wash produced by HSC.

The accident

Portsmouth Express was operating close inshore while returning to Portsmouth after a period of repairs at Southampton. On board, the master, mate and pilot were unaware that the vessel was producing a hazardous wash. When the wash arrived onshore, a series of large breaking waves was produced, which rolled up the beach and went right over the sea wall, flooding the road and park beyond. It was high water at the time and the sea was calm.

Several members of the public sustained significant injuries, and one was washed out to sea. Had young children been on the beach, fatalities might well have resulted.

Passage Plan Risk Assessment

To receive a Permit to Operate, the operator must produce a Passage Plan Risk Assessment for the route on which the vessel operates. The purpose of the risk assessment is to ensure that wash does not create any significant problems on shorelines near to the track of the vessel. The vessel involved here was not operating on her normal route at the time of the accident. A Passage Plan Risk Assessment was not produced for this passage. The standard passage plan, which was compiled before the start of the voyage, did not consider the effect of wash.

Safety Recommendations:

To avoid similar problems in the future, the following recommendations are made:

HSC operating companies are recommended to:

* Compile a Passage Plan Risk Assessment, comprising a detailed analysis of wash, for all voyages close to land and/or in shallow water, unless the HSC is operated at moderate speed.
* Ensure that all masters and mates who operate HSC have an understanding of the problems of wash

HAs employing pilots on HSC are recommended to:

* Require a Passage Plan Risk Assessment, comprising a detailed analysis of wash, for all HSC movements. If this document is not available, the pilot should insist the vessel is run at moderate speed.
* Ensure that all pilots employed on HSC have an understanding of the problems of wash. Preferably, this should be obtained by attending an appropriate course but, as a minimum, it should include the reading of some relevant technical papers.

BOOKS

TUG USE IN PORT

Captain Henk Hensen FNI

Those of you who have copies of this book will be wondering why I am reviewing it again. I'm not! This is a brand new edition released a mere seven years after the original became what in my opinion was the ultimate reference books on tug use. The book has been updated to include new tug designs and methods of use.

• A general review is presented first of factors which affect operational requirements for a harbour tug, such as the different tasks for which they are used, the particulars of a port, the environmental conditions and ships calling at the port.

• Various types of harbour tug are discussed in a general way, addressing the diversity of design, propulsion, steering and manoeuvring capabilities.

• After reviewing assisting methods in use worldwide, tug types are considered in more detail, including the performance of different types of tug resulting from the location of propulsion devices, towing point and lateral centre of pressure.

• The number of tugs required to handle a vessel safely is frequently a topic for discussion between pilots and shipmasters. This important subject is discussed taking into account the effects of wind, current, shallow water and confined waters. The number of tugs and total bollard pull used in several ports around the world is mentioned.

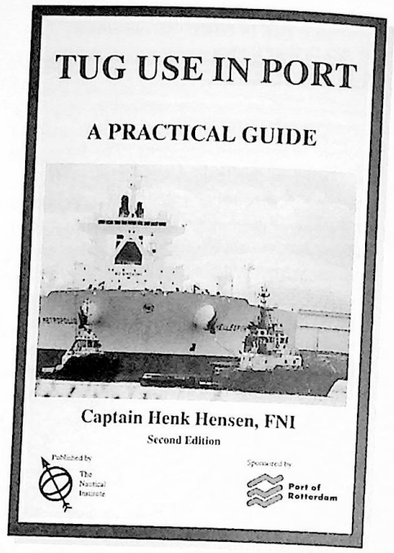
• Much attention is given to dangerous operational situations for tugs, such as interaction and girting, and to environmental conditions such as fog.

• Towing equipment is dealt with, particularly in relation to safe and efficient shiphandling.

• Escorting and escort tugs is dealt with separately.

• Proper training for tug captain, pilot, master and crew is essential in order that they handle the tug safely and efficiently. Training is therefore an important subject in the book, including simulator training and research.

Comprehensively illustrated, with high quality photographs and detailed diagrams the book deals with the subject in a straightforward manner.



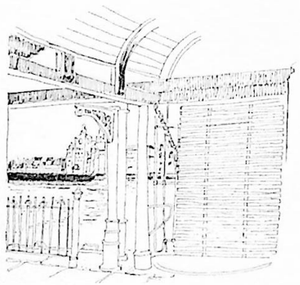
Every pilotage act involving tugs involves careful balancing of all the forces to achieve a safe berthing and this book will provide all the information a pilot needs to understand the optimum positioning and operational parameters of the various types of tug.

Available from: The Publications Officer, The Nautical Institute, 202 Lambeth Rd., London SE1 7LQ. Tel: 0171 401 2817.
***£38.50** (Members) **£55.00** (Non-members)*

SITTING ON A BOLLARD

By Barry Youde ~ With Illustrations by Sue Evans

Many pilots have hidden talents and several have written books about the life of a pilot. Ex Liverpool pilot, Barry Youde, now a lawyer, has written a most entertaining book of verse which casts a light hearted eye over our profession. Although largely Mersey orientated the situations depicted are recognisable to all of us. The one below is non port specific but there again!!??



COCKSHAW'S GRACE

With proper grace and moral tone
Served Pilot Cockshaw Sanctimone.
His square-rig training would attest
To standards of the very best:
Incisive mind and silken tongue
Were evidenced when he was young.
These gifts of Nature worked with ease:
- A signal, "Represent us, please!"
Was soon made by his fellows all;
And Cockshaw answered to the call.
His School-Ship, as the best of Schools,
Had tutored Cockshaw as to Rules,
Though sadly had just this to say
Of any Rule, one word, "Obey!"
It failed to point out any more
About the Great Protective Law,
Or of the Over-Riding Truth,
Observed by more perceptive youth,
That, though it's true that Rules are Rules,
These things are made sometimes by fools.
And so it came to pass one day,
With sun a-shining, gulls at play,
There was a Harbour-Offizier
Who told a Pilot, "Now, look here,
Be well aware, the Rule is made:
The next ship you will serve unpaid."
Ahem. Ahum. Alas. Alack.
The Pilot sent the Order back.
The Offizier, distinctly miffed,
Cried, "Discipline has gone adrift!
The scoundrel Pilot, lackaday,
Will hang at dawn, come judgment day!"
The consequence which flowed was that
The Pilot soon was On The Mat.
Fined, he was a rebel branded,
Warned disgraced and reprimanded.
And where was Cockshaw that fine morning?
Why, handing out the dire warning.

Some weeks later, Cockshaw mused,
"The Law, it seems, has been mis-used.
It could occur, but rue the thought,
The Pilot could appeal in Court."
The Pilot said, "My dear old chap,
Let's not inflate this sad mishap.
The issue here is clear-cut:
Power has been abused en-glut.
With common-sense and native nous
We'll sort this matter out in-house."
Cockshaw, much relieved, replied,
"A Caveat shall be applied."
Alas, the Caveat endorsed.
The penalties remained enforced.
The Pilot, clearly not amused,
Was into action thus enthused.
The matter went before the Crown:
The House of Cards came tumbling down.
The Judge said, "This Appeal succeeds,
Exactly as the Pilot pleads.
An Order, serve a ship unpaid,
Is not one which need be obeyed."
The Court thus granted recognition
Of every Pilot's true position,
In written law, black, white and clean.
Let all men stand! God Save the Queen!
Two parties were in Court that day
To hear the words the Law would say.
On one side sat the Pilot, tense,
But much relieved to hear some sense.
Opposing, taking notes verbatim,
The Harbour which did once berate him.
While Cockshaw, in that Courtroom wide
attended: - On the Harbour's side.
Advise us, God of utmost Grace,
Why was Cockshaw in that Place?
Exactly what was his Intent?
Which party did he Represent?
Pray, tell us, God of Time and Space,
What did become of Cockshaw's grace?

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GULF WAR 2

As I write this the military campaign in Iraq is over but peace and order are still far from being established. I am aware of two UK pilots having been "called up".

Harwich pilot Mark Murrison is a Lieutenant Commander RNR and served on board HMS *Ark Royal* on the Staff of the Commander Amphibious Task Group. His job title was A/STUFTO (Assistant to the Ships Taken up from Trade Officer) whose task was to monitor and coordinate the merchant shipping incorporated in the Task Group.

Southampton pilot, Nigel Bassett, a former CO of the Omani Royal Yacht and an Arabic speaker, served with the Task Group on one of the merchant vessels.

I understand that both are now safely back home enjoying a well earned period of rest and recuperation prior to returning to their piloting careers.

JCB

MV Derbyshire Exhibition

With the agreement and encouragement of the Derbyshire Families Association, the Shipwreck Heritage Centre intends to put on an exhibition telling the story of the loss of the *Derbyshire*. We will cover the 20-year period from typhoon Orchid in 1980 to the conclusion of the reopened formal inquiry in 2000. The exhibition will be at the Shipwreck Heritage Centre in Hastings and we intend to open it later this spring.

In the absence of artefacts the exhibition will have to consist of photos, drawings and text together with the various formal reports. Although we have photos collected by the DFA over 20 years, these are photocopies from newspapers and not really suitable for reproduction.

Any help that pilots can give us in this matter would be very much appreciated.

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TN34 3DW, England,
Email:robertpage1066@aol.com

International Best Practice for Maritime Pilots

As you may recall I received notification of this publication just as the January issue was going to print. Whilst some have praised it as a useful guide, pilotage organisations have criticised the fact that it has been drawn up and released without consultation with pilots. IMPA has expressed the concern that by failing to acknowledge the complexities of a pilotage passage the booklet could well mislead Masters as to their legal position in certain parts of the world.

The stated ideal of berth to berth passage planning by the Master prior to arrival off a port is simply unrealistic. With every vessel an efficient port passage is undertaken in a constantly changing environment of other traffic movements, berth availability, tidal variations and weather. All of these factors are unpredictable and require the pilot to be both vigilant and adaptable, but increasingly ship owners and inspectors are seeking to impose rigid and unrealistic criteria on Masters and pilots and this is starting to lead to delays and potential safety conflicts. Pilots are employed to conduct a vessel in the safest possible manner with the utmost of despatch through the compulsory district. High professional standards in pilotage training enable a pilot to be aware of the operational parameters of any vessel (not just his own) within his district and pilots must accept that they have a duty to present the master with full details of the intended passage on boarding and keep him updated of any amendments to the master/pilot information exchange (MPEX) form throughout the passage. Masters are paying for a highly skilled specialist professional whose charges, when compared for example to those of lawyers, are modest. Therefore, just as they would never consider creating a guidance booklet on Maritime Law without consulting the legal industry the Shipping Industry should respect this professional status of pilots and await the outcome of formal discussions at the IMO before releasing documents purporting to provide "Best Practice".

IMPA therefore recommends that any recipients ignore this booklet and file it in an appropriate manner!

THV Patricia
Passengers now welcome!

Photo: Richard Woodman

Trinity House are now offering passenger voyages on THV *Patricia*. The voyages will normally be for 7 days or more whilst the vessel undertakes its normal duties around the UK coast. They are being marketed through Strand Travel, who specialise in arranging passenger voyages on commercial vessels.

The *Patricia* can accommodate up to 12 guests, with prices starting at £180 per day for a seven-night voyage. Revenue generated from the enterprise will be paid into the General Lighthouse Fund, which is used to fund the lighthouse services provided by Trinity House and its sister authorities in Scotland and the Republic of Ireland.

For further information contact Howard Cooper, Media and Communication Officer, Trinity House Lighthouse Service
Tel 020 74816950 or e-mail howard.cooper@tbls.org

Help Wanted

I am pleased to note that no obituaries have been submitted this quarter. However following the obituary of **Walter Dawson** that was submitted for the July 2002 issue by Walter's Nephew **IG Dibben**, I have received a request for information from New Zealand from recently retired Auckland pilot Alan George.

It transpires that Walter's younger brother Ian spent the Second World War in the care of the George family in New Zealand but the two families have since lost touch.

Alan and his wife Janice would very much like to re-establish contact with Ian Dawson or his nephew IG Dibben so if any of you have an address for either of the above, please could you let me know through my usual contact details on the front page.

JCB

Pensioners Deceased

November 2002 - January 2003

AV Baker	***Harwich***
CB Davidson	***London ~ Cinque***
DS Guiness	***London ~ South***
AS Lithgo	***Tees***
JE Lodge	***London ~ RT***
JS Morton	***London ~ Channel***
MR Oates	***Southampton***
E Sanderson	***Humber***
C Stocks	***Humber***

THE PILOT

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