

Seaworthiness and the Human Element

→ 'Crews Control' was the title of an interesting talk given to the branch in March by Ron Clark MNI, Admiralty Manager at Reed Smith Richards Butler in Hong Kong.

Although best known for his legal prowess, Ron is a Master Mariner and former UK government surveyor with wide experience. He began his legal career in 1993 and first came to Hong Kong with Richards Butler in 2008. Such is the relevance of the topic and the reputation of the speaker that 45 people booked to hear him, and more than 60 turned up.

Ron began with a recap of some recent examples of cases handled by his firm in which the human element played a major role:

- A murder following quarrels on board, where alcohol played a part;
- A violent assault which left a senior officer paralysed;
- Suicides preceded by unusual behaviour or poor performance;
- Casualties where fatigue and stress have led to flawed decision-making.

He also described a grounding following an incident involving a crew member who suffered a serious medical episode which led to him attacking one colleague before causing extensive damage to the engine room systems, leading to a loss of power to the vessel.

Competence and negligence

Ron reminded us that one definition of seaworthiness is that *'a ship will be deemed seaworthy if she is in a reasonably fit state as to repairs, equipment, crew and all other respects to encounter the ordinary perils of the voyage [insured] at the time of sailing.'* He also reminded us of the 'prudent owner' test – if a vessel has a certain defect, would a prudent owner have required that it be made good before departure if he knew about it? If he would, then the ship was unseaworthy.

Seaworthiness is a flexible concept which applies not only to the vessel's physical condition, but can include cargoworthiness, proper documentation and correct manning. Negligence is subject to the 'reasonable man' test; has performance fallen below the expected standard required of that particular crew member? Competence, on the other hand, considers whether his or her skill level reaches that which should be reasonably expected for a person holding the rank.

The distinction was demonstrated using the example of the *Eurasian Dream*, where a fire on a vehicle carrier resulted in the court finding that the Master and crew were

ignorant of the hazards when carrying cars. It was held that the fire would not have broken out if the crew had been properly instructed and trained. The failure to contain the fire led to a total loss of the ship and cargo, and a finding that incompetence rendered the vessel unseaworthy.

The definition of seaworthiness can change over time, and will be judged by the standards prevailing at the time and relative to the state of knowledge at the time. The judge's approach in the *Eurasian Dream* illustrated how the mental health of a seafarer can impact on his or her competence and, as a consequence, on the vessel's seaworthiness.

Fatigue, sleepiness and stress

Turning to fatigue, Ron pointed out the differences between short-term sleepiness (as a result, perhaps, of a night on the tiles) and long-term fatigue. Fatigue is insidious, persists over time, and can lead to both physical and mental malaise. Irritability and poor decision-making are just two of the likely outcomes.

Stress is a different matter, and can be brought on by increased workload, poor management support, the risk of piracy and criminalisation, social isolation, harassment and bullying, among other things. It can cause anxiety, insomnia, fatigue and cardiovascular disorders and can lead to substance abuse. As with fatigue, there is an increased risk of accidents.

Shipowners and insurers obviously face exposure to losses arising from unseaworthiness due to incompetence, and positive action is needed to ensure crews are able to cope with the mental challenges they face at sea. Preventative measures include awareness on the part of owners, adherence to STCW and MLC requirements on hours of work, proper manning and Fatigue Risk Management Systems (FRMS).

FRMS are well-established in other modes of transport but, as usual, shipping has been slow to adopt them and a change of culture is required. Our industry needs to eliminate the social stigma surrounding fatigue and increase awareness training. Data should be collected,

and ships should be audited specifically for signs of fatigue.

Regarding stress, Ron pointed out that we do not think it affects us, but we are wrong. Typical causes include long voyages, social isolation, short turnaround times, bullying and multicultural crews. Stress can result in reduced work performance, increased sickness and absence from duty. There are now some good online programmes to help seafarers cope with stress, which is one argument for providing onboard internet access. An amendment to the MLC due to enter into force in December 2018 will require companies to have a written policy statement on the issue of harassment and bullying and to promote awareness both aboard and ashore. Guidance must be displayed on board.

Points for discussion

A lively question and answer session followed. Among the points which came out were:

- A certificate is no longer, by itself, an effective way of demonstrating competency. A more holistic approach involving, for example, an assessment of fatigue and stress, is now required;
- Some short-sea operators claim sleepiness and fatigue are not linked, although those present at the meeting disagreed. This led to a discussion about the difficulty of identifying fatigue and recent research into new watchkeeping systems. The new IMO guidelines on fatigue are awaited with interest;
- Counselling over the internet is all very well, but internet access can increase stress when seafarers are bombarded by news of domestic disasters at home. Nonetheless, it was accepted that modern crews expect and demand access. One participant suggested having 'internet cafes' on board so people cannot hide in their cabins whilst accessing the internet;
- Some attendees asserted that ships which have dropped anchor to give the crew time to rest have not been put off hire as a result;
- Minimum Safe Manning certificates are less than perfect. Perhaps it is time to consider a better way of deciding manning levels.

By this time the food was getting cold, but the discussions continued informally long into the evening. We are grateful to Ron Clark for a superb presentation, and to Reed Smith Richards Butler for sponsoring the event.

The presentation can be found in full on the branch website. <http://www.nautinsthk.com/p83.html> (see bottom of web page for link to live presentation).

Capt Alan Loynd FNI

