

## Prosecutions 2014

### Guisborough man convicted on using forged seaman certificates

**Defendant:** Dean James Rye at Middlesborough Magistrates' Court

**Date of Hearing:** 2 January 2014

**Offence:** Using a False Instrument in breach of the Forgery and Counterfeiting Act 2006.

**Details:** Mr Rye was able to secure employment in February 2013 on the Swire Blue Ocean Crane Ship, Pacific Orca, operating in the North Sea from Denmark, by producing a forged AB certificate. However, it was recognized by other crew members that he lacked the necessary knowledge and skills expected of a professional seaman, potentially putting himself and others at risk.

Enquiries by the Master of the vessel with the MCA confirmed that Rye had not been issued with an AB certificate. He was dismissed from the ship after two weeks, as soon as the forgery came to light. Rye was subsequently arrested by Cleveland Police and charged with using the forged document to secure employment.

**Penalty:** Mr Rye was fined £265 for the offence, ordered to pay £85 in costs and a victim surcharge of £26. This took into account his early guilty plea.

### Charity fined after operating uncertificated vessel

**Defendant:** Beauchamp Lodge Settlement at Highbury Corner Magistrates' Court

**Date of Hearing:** 16 January 2014

**Offence:** Operating a passenger vessel without a valid Passenger Certificate

**Details:** The vessel 'Beauchamp' is a barge operated by the charity as a floating classroom for children and young people. It can also be hired for events, such as parties and weddings and is capable of carrying up to 80 passengers as it travels along the Grand Union Canal. On 3 July 2013 a Maritime & Coastguard Agency surveyor attended the vessel to conduct a survey, and established that the vessel had been operating since the 26 January 2013 without a valid Passenger Certificate authorising its use as a passenger vessel.

The vessel had been used on 67 occasions without a certificate, carrying young children on a number of occasions. A number of defects were found on the vessel when checked by the surveyor.

When interviewed Mr Ryder, the chief executive of the charity, admitted the vessel had been used without the certificate being in place. He was profoundly sorry for the situation, which he stated was an oversight by management, something that would not be repeated.

Mr Ryder appeared before Highbury Corner magistrates court representing the charity, where he pleaded guilty on behalf of the charity.

**Penalty:** Beauchamp Lodge Settlement was fined £300 for the offence, ordered to pay £3000 in costs and a victim surcharge of £30. This took into account his early guilty plea and full cooperation with MCA.

### Suspended sentence for refusing breath test

**Defendant:** Captain Cheong Gi Han at Southampton Crown Court

**Date of Hearing:** 16 January 2014

**Offence:** Failure to provide breath test under the Railway and Transport Safety Act 2003

**Details:** Captain Han was in charge of the Panamanian flagged 68'000 tons car transporter MV 'Morning Lisa' during the evening of 27 December 2013 when it was boarded by a pilot prior to entry in to the port of Southampton.

The pilot noticed that Captain Han appeared to be under the influence of alcohol and reported his concerns to the harbour authority.

Police officers attended the vessel once alongside during the early hours of 28 December 2013 and requested Captain Han provide a breath test, which he refused to do. Captain Han was arrested and at the police station refused to provide the two evidential breath samples. Captain Han was charged and appeared at Southampton magistrates' court later that day where he was remanded in custody until his appearance at crown court.

**Penalty:** Appearing at Southampton Crown Court on 16 January 2014 Captain Han entered a guilty plea and was sentenced to 4 months imprisonment suspended for 2 years and ordered to pay £6000 fine and £120 victim surcharge.

### **Skipton canal boat company fined after operating unlicensed vessels**

**Defendant:** Ian Clarke of Pennine Cruisers Ltd at Skipton Magistrates' Court

**Date of Hearing:** 14 March 2014

**Offence:** Operating passenger vessels without valid passenger certificates.

**Details:** Canal boats "Sam" and "Leo" operate on a section of the Leeds to Liverpool canal at Skipton and are authorised to carry no more than 12 passengers.

Carrying more than 12 passengers would require the vessels to be surveyed and issued with passenger certificates if they met the required safety standards.

On 31 July 2013 a Maritime and Coastguard (MCA) Surveyor saw "Leo" being operated with 13 passengers on board and the company was spoken to. "Sam" was filmed operating with 13 passengers on board on 2 August 2013 while under control of Mr Clarke.

These incidents occurred after the company had received several warnings from the MCA about carrying excess passengers.

When interviewed, Mr Clarke admitted the vessels had been used without the appropriate certificates. He also admitted this was after the company had been warned against it.

He was sorry for the situation, which he said was not done deliberately.

**Penalty:** Ian Clarke was fined £500 for both offences, made to pay £2,500 in costs and £100 victim surcharge. This took into account his early guilty plea and full cooperation with the MCA.

### **Operator fined after cargo ship crashes into Farne Islands**

**Defendant:** Cuxship Management GmbH, of Cuxhaven, Germany at Newcastle Crown Court

**Date of Hearing:** 27 March 2014

**Offence:** Breaches of the International Regulations for Preventing Collisions At Sea, 1972.

**Details:** On the evening of 15 March 2013, the MV Danio left Perth, in Scotland, with a cargo of logs, destined for Ghent, in Belgium. The Master was on watch until around midnight when he handed over to the Chief Officer, who had contracted an eye infection after handling a previous 'dusty' cargo.

After coming on watch the Chief Officer's eyes became increasingly irritable, so he sat on a settee, put his head back, and administered some prescription eye drops.

He then inadvertently fell asleep.

He was woken up 90 minutes later by the noise of the ship grounding in the early hours of 16 March. Examination of the AIS track showed that the vessel went in a straight line from the Firth of Forth until it ran aground on rocks underneath the Farne Island lighthouse. There was no lookout on watch, so the Chief Officer was alone on the bridge.

The MV Danio crossed an outer reef before hitting a rocky shelf. It hit head on, but then pivoted about 180°, which resulted in the whole ship becoming stuck on the rocks.

The crew did not contact HM Coastguard for an hour after the incident occurred.

However, they contacted the vessel's owners within that time.

The vessel was finally removed on 28 March 2013, when tidal conditions allowed it to be refloated and it was towed to Blyth for inspection.

**Penalty:** Cuxship Management was fined £60,000, ordered to pay £12,796.77 in costs and £120 victim surcharge. This took into account the guilty plea but also the potential for damage to an environmentally sensitive area.

### Ship operator fined after oil pollution

**Defendant:** Evergreen Marine at Southampton Magistrates' Court

**Date of Hearing:** 29 April 2014

**Offence:** Breach of the Prevention of Oil Pollution Regulations.

**Details:** The Ever Sigma – operated by Evergreen Marine – was en route from Greece to the Netherlands when 700 litres of heavy fuel oil went overboard.

The incident occurred when the chief engineer decided to carry out an internal transfer of heavy fuel oil using two pumps. The heavy fuel oil was not pre-heated prior to the transfer – and the vessel's master was not informed.

A precautionary alarm sounded when the tank reached 336 tonnes (69% full).

However, the use of two pumps continued for another hour when the transfer was stopped when the fuel level reached 417 tonnes (85% full).

Shortly afterwards, the ship's bosun – a senior crewman of the deck – was doing rounds when he noticed heavy fuel oil spilling onto the deck through an air pipe. The alarm was raised and clean-up operations on board began. This took about nine hours.

Unfortunately, some heavy fuel oil spilt overboard about 83 miles off Kalamata in Greece.

About 27 hours after the spill occurred, the Ever Sigma reported the incident to the Italian authorities. The ship was advised by the Italian Coastguard to report the incident to Greece.

This was done. On arrival in Rotterdam, the vessel was inspected by Dutch officials who conducted their own investigation. Information was passed to the UK as flag state to ultimately deal with the matter.

By pumping cold heavy fuel oil with two pumps, the ship's staff had over-pressurised the tank, which then forced it out through an air pipe.

There was also a breakdown in the ship's safety management system and procedures were not followed during the incident, which occurred on 24 January, 2013.

**Penalty:** Evergreen Marine was fined £10,000, ordered to pay £7,191.01 in costs and £120 victim surcharge. This took into account the guilty plea, cooperation with authorities and

previous good character but also the potential for damage to an environmentally sensitive area, the delay in reporting and the fact that if not spotted it would have been worse.

### **RHIB collision in Cardiff Bay leads to substantial fine**

**Defendant:** Cardiff Bay Yacht Club and Chief Instructor Nicholas Sawyer at Cardiff Crown Court

**Date of Hearing:** 30 May 2014

**Offence:** Breach of S.98, S.100 of the Merchant Shipping Act 1995 and of Regulations 5 (1) and 24(1) of the Merchant Shipping and Fishing Vessels (Health & Safety at Work) Regulations 1997.

**Details:** Penarth Motor Boat and Sailing Club, trading as Cardiff Bay Yacht Club, and its Chief Instructor, Nicholas Sawyer, pleaded guilty at an earlier hearing to charges relating to failures in their duty of care for children attending a residential course in October 2010. The 4-day sail training event was attended by 24 girls aged between 10 and 14. On the evening of 27 October 2010, after a day's training, the girls were taken ice skating. On leaving the rink at 8pm the girls boarded 4 club RHIBs to take them across Cardiff Bay back to their accommodation. It was dark and the RHIBs had no navigation lights, even though this is required by law. The children were not supplied with lifejackets and were expected to use their own flotation jackets.

Two of the RHIB coxswains were paid contractors employed by Cardiff Bay Yacht Club but were not qualified for navigating at night. A collision took place between two RHIBs being controlled by these coxswains, and some of the children were thrown into the water. One of the girls, aged 10, was knocked momentarily unconscious when she was thrown into the water. All the girls were recovered from the water and taken ashore.

The following day the girl who was knocked unconscious began to deteriorate and was collected and taken to hospital by her mother. The child was later diagnosed as suffering from a life-changing brain injury for which she is still receiving treatment. Another child suffered three compressed discs in her spine.

The incident was reported to the maritime and Coastguard Agency (MCA) and the Agency was unaware of the incident until the parents of the severely injured girl contacted Cardiff Marine Office a year later.

**Penalty:** The sailing club and the Chief Instructor were fined £67,000, ordered to pay costs. The Chief Instructor was also given 180 hours of Community Service. This took into account the lack of risk assessment by those responsible for the safety of children on the water.

### **Divers fined after raiding shipwrecks without declaring their finds**

**Defendant:** David Knight and Edward Huzzey at Southampton Magistrates' Court

**Date of Hearing:** 2 July 2014

**Offence:** 19 offences between them, contrary to section 236 and section 237 of the Merchant Shipping Act 1995

**Details:** In a landmark case on Wednesday 2nd July two divers from Kent have been made to pay a total of £63,500 in fines and costs for not declaring valuable items from shipwrecks off the UK coast. Items were taken from shipwrecks off the Kent coast, with the first known objects removed in 2001. The shipwrecks targeted included German submarines from World War I and an unknown 200 year old wreck carrying English East India Company cargo.

The items included eight bronze cannons, three propellers from German submarines, lead and tin ingots, along with various other artefacts. It's thought the combined value of the items is more than £250,000.

The MCA is aware from diary entries that Knight and Huzzey used explosives and sophisticated cutting equipment to free wreck material.

It's believed that six of the cannons had been sold on, but in the last fortnight they have been returned to the Maritime and Coastguard Agency (MCA).

**Penalty:** Knight was fined £7,000 and Huzzey £6,500. They were each ordered to pay £25,000 in costs. The District Judge took into account the scale of the operation, considered to have been on an industrial scale: the resources employed were valuable and substantial, using good quality lifting equipment and explosives. Huzzey and Knight are friends and clearly operated in close co-operation to actively scavenge for material from the wrecks they explored.

### **Overloaded Vessel results in substantial fine**

**Defendant:** Captain Aleksander Krugliakov and Verwaltungsgesellschaft gmbh at Southampton Magistrates Court

**Date of Hearing:** 9 February 2012

**Offence:** Breach of Load line Regulations

**Details:** On 23 November 2010, the Katja was loaded to its marks with rock salt and sailed from Goderich to arrive at the Manchester Ship Canal. Rock salt was in high demand to treat UK highways at this time.

As the vessel entered the River Mersey, the pilot on another passing vessel noticed that the Plimsoll Line and load lines were not visible and the Katja appeared very low in the water.

When the Katja arrived in the Queen Elizabeth II Dock it was inspected by MCA Port State Control Officers, who found that the load line that marks the safety limit of the vessel was submerged by 39.5 cm.

**Penalty:** Fine of £28,015, with costs of £5000.

### **Skipper fined after failing to keep a lookout**

**Defendant:** Daren Senior at Newcastle Magistrates' Court

**Date of Hearing:** 5 August 2014

**Offence:** Breach of Rule 5 of the International Regulations for the Prevention of Collisions at Sea.

**Details:** Darren Senior of Whitley Bay admitted operating his boat on autopilot while he worked at the stern. As a result, the 9-metre Amadeus collided with another fishing boat. Although no-one was injured and structural damage was minimal, the other vessel took on water following the collision.

The court heard that Mr Senior, a fisherman with more than 30 years' experience, had finished a day's fishing about 6-miles east of the entrance to the River Tyne and had seen the other fishing vessel, which he assumed was also heading back to port. However, that vessel was stationary while its crew dealt with the boat's nets.

The vessel's crew had seen the Amadeus approaching but they had assumed it was coming to offer assistance following an earlier radio message about a problem with their nets. Mr Senior realised a collision was imminent moments before it occurred and tried to take avoiding action. When interviewed by Maritime and Coastguard Agency (MCA) officers Mr Senior admitted operating his vessel alone on autopilot. At Newcastle Magistrates court on Tuesday 5 August, he pleaded guilty to failing to keep a proper lookout, as required by Rule 5 of the International Regulations for the prevention of collisions at sea.

**Penalty:** In sentencing, the court took into consideration Mr Senior's full cooperation with the MCA, as well as his early guilty plea. He was fined £1,000 with £2,500 costs and a £100 victim surcharge.

### **Master fined after Wind Farm Collision**

**Defendant:** Mr Geoffrey Whinfrey at Southampton Magistrates Court

**Date of Hearing:** 2 September 2014

**Offence:** Breach of Rule 5 of the International Regulations for Preventing Collisions at Sea 1972

**Details:** On 21 November 2012 Mr Whinfrey has taken over as Master of the Island Panther and was heading back to shore due to a bad weather forecast. He plotted a course back to shore and was only using the lights on the turbines that he was sailing past as a navigational guide. He then hit an unlit turbine on the starboard side and the vessel came to a standstill. Five passengers suffered minor injuries as a result of this. When asked why he didn't avoid the wind farm altogether, he stated that there was a recognised route through the turbines.

**Penalty:** Fined £1,000, plus £2,000 in costs.

### **Too many passengers lands Ferry Company in court**

**Defendant:** Mrs Frida Edwards (Owner), Hayling Ferry Ltd (Operator), Mr Geoffrey Oliver (Master)

**Date of Hearing:** Tuesday, 23<sup>rd</sup> September 2014  
Magistrate's Court

**Location:** Portsmouth

**Offences:** Each charged with six offences contrary to Section 85 and 86 of the Merchant Shipping Act 1995, including four counts of allowing a vessel to proceed on a voyage without a sufficient Passenger Certificate for number of persons carried, and two counts of allowing a vessel to proceed on a voyage without their being sufficient liferaft capacity for the passengers onboard.

#### **Verdict & Sentence:**

Mrs Frida Edwards – Plead Guilty - Fine of £600, £300 costs and £20 victim surcharge.  
Hayling Ferry Ltd – Plead Guilty - Fine of £6,000, £4,000 costs and £100 victim surcharge.  
Mr Geoffrey Oliver – Plead Guilty - Fine of £900, £400 costs and £20 victim surcharge.

#### **Overview:**

The vessel Tina Maria is an 11 metre, single engine boat used as a ferry between Hayling Island and Eastney, across the entrance to Langstone Harbour. The vessel was certified to carry 12 passengers and two crew.

On four occasions between January and February 2014, Tina Maria, was recorded as landing between 16 and 27 passengers at Hayling Island, mostly school children returning home from Portsmouth.

The vessel carried 14 adult lifejackets, 12 child lifejackets and had liferaft capacity for 18 passengers and crew.

In the four years previously Tina Maria had been issued with multiple warning letters, Improvement Notices, Prohibition Notices and Simple Cautions by the MCA. Certificates had also been withdrawn.

The defendants plead guilty to all six charges.



## **Crew member of Newlyn Fishing Boat fined**

**Defendant:** Mr Andrew Cowan-Dickie

**Date of Hearing:** 10<sup>th</sup> October 2014 **Location:** Bodmin Magistrate's Court

**Offence:** Breach of Rules 5, 8, 15 and 16 COLREGS – contrary to Section 85 and 86 of the Merchant Shipping Act 1995.

**Verdict & Sentence:**

Mr Andrew Cowan-Dickie – Plead Guilty – Fine of £1,000, £1,000 costs and £100 victim surcharge.

**Overview:**

Mr Cowan-Dickie was a crew member aboard the Newlyn-based trawler James R H Stevenson on 25<sup>th</sup> March 2014. The vessel left with four crew and headed toward the fishing grounds.

Mr Cowan-Dickie was Officer of the Watch when the vessel collided with a 2000gt Coaster 14 miles out of Newlyn Harbour. Considerable damage was caused to the Coaster. Mr Cowan-Dickie was interviewed by MCA Enforcement Officers and stated that he failed to see the Coaster.

Mr Cowan-Dickie was subsequently prosecuted by the MCA and plead guilty to the charges.

## **Master fined after wind farm vessel collision off Grimsby**

**Defendant:** Mr Michael Gallagher

**Date of Hearing:** 31<sup>st</sup> October 2014 **Location:** Southampton Magistrate's Court

**Offences:** Breach of Section 58 of the Merchant Shipping Act 1995 (Failure to keep a proper lookout)

**Verdict & Sentence:**

Mr Michael Gallagher – Plead Guilty – Fine of £1,500, £8,082 costs, £120 victim surcharge.

**Overview:**

Mr Michael Gallagher was Master of the workboat Catamaran Windcat 9 when it hit a large floating military target in Donna Nook Air Weapons Range on 21<sup>st</sup> November 2012.

At the time of the collision the Windcat 9 was estimated to have been travelling around 23 knots (26 mph). The hull of the vessel was badly damaged, causing extensive flooding, but there were no injuries to the 15 people on board at the time.

An investigation by the MCA Enforcement Unit found that Mr Gallagher was not keeping a proper lookout and had incorrectly set his electronic navigation equipment.