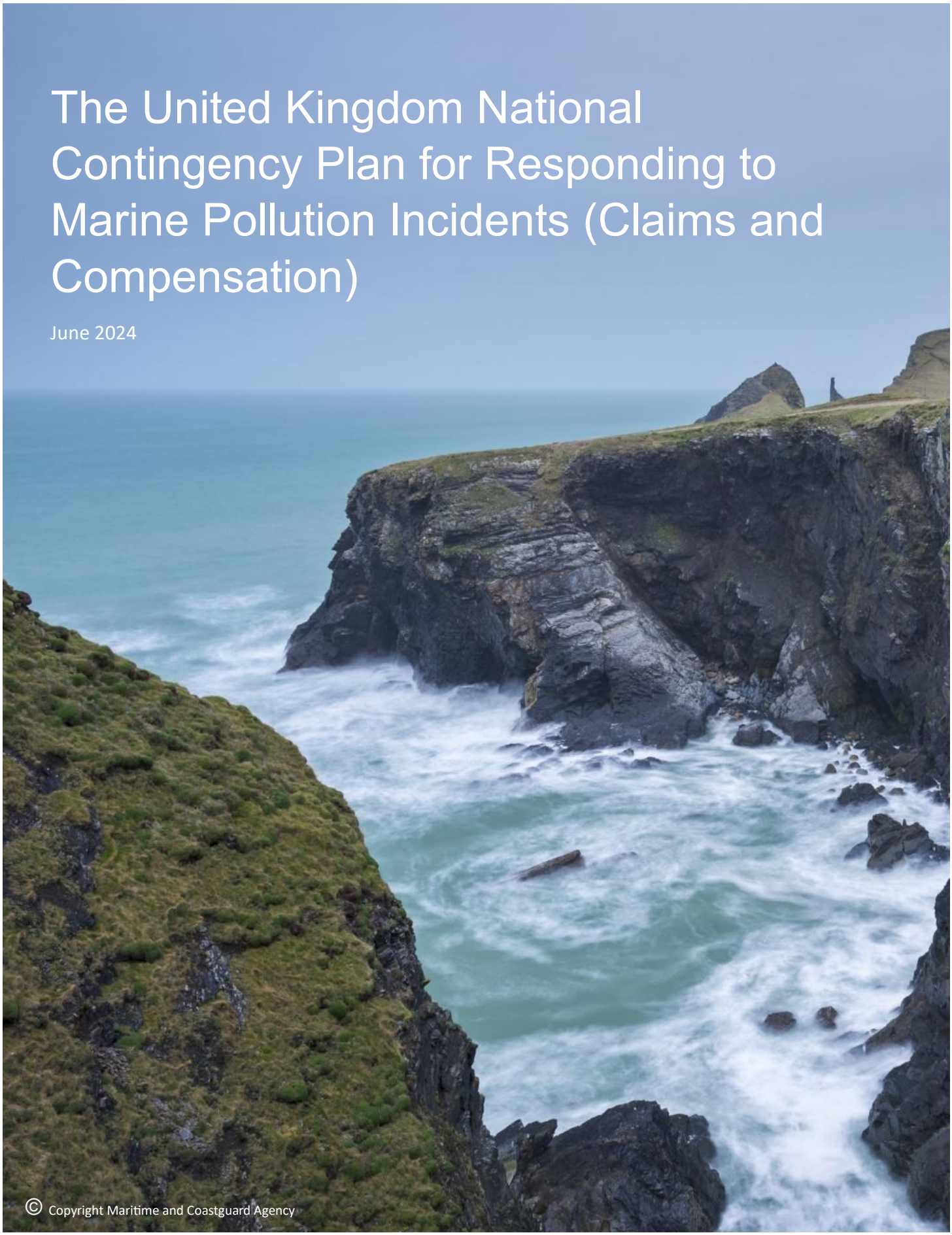
HM Government

The United Kingdom National Contingency Plan for Responding to Marine Pollution Incidents (Claims and Compensation)

June 2024



1. Introduction

Dealing with marine pollution, whether at sea or on the shore, can be a protracted and expensive business. Initially, the costs of clean-up operations fall on the bodies incurring them.

This appendix gives a brief description of the ways that those involved in clean-up operations can later recover their costs. However, its purpose is not to provide definitive legal advice.

The route by which compensation is available for a pollution incident inside the UK Exclusive Economic Zone and the UK sector of the continental shelf (UKCS) is dependent upon the source and the type of the pollutant involved.

This appendix also contains information on how those who respond to, or are affected by, marine pollution incidents should best go about recovering the costs that they incur regardless of source.

It is essential that during any counter pollution or salvage operation all those involved keep records of what they did, when and why they did it and what resources they used.

There is often pressure to neglect record keeping in order to deal with new issues and problems. However, the importance of records cannot be over emphasised. It is simply not realistic to rely on memory to reconstruct events in a fast moving and possibly lengthy incident.

Responders must therefore arrange to keep adequate records. These records extend from minutes of meetings including all decisions made to beachmaster records of the number of personnel, plant and materials used on a particular beach on a particular day and who provided them. The compilation of a photographic library, with all photographs date and time stamped would be of great assistance as proof of activities.

2. Shipping Incidents

For incidents involving shipping there are multiple regimes in place for insurance and claiming and compensation.

2.1. Pollution incident involving a commercially operated tanker involving persistent oil carried as cargo.

Three international instruments establish the international compensation regime for oil pollution damage from tankers:

- The International Convention on Civil Liability for Oil Pollution Damage 1992 (the “1992 Civil Liability Convention”) and deals with the liability of tanker owners.
- The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (the “1992 Fund Convention”) and establishes the IOPC Fund and the Supplementary Fund Protocol establishes the Supplementary Fund.
- The Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (“the Supplementary Fund Protocol”) and the Merchant Shipping Act 1995 implements the Civil Liability Convention, the IOPC Fund Convention and the Supplementary Fund Protocol in the UK.

Under the regime, the tanker owner is strictly liable for the costs of clean-up operations. Strict liability means that the claimant need not prove fault to obtain compensation. The tanker owner may escape liability only if they can prove that one of a limited number of exceptional circumstances (for example, an act of war) caused the damage.

Compensation up to a fixed amount (currently approximately £730 million) is available under an international compensation regime (comprising the 1992 Civil Liability Convention[1], the 1992 Fund Convention[2] and the 2003 Supplementary Fund Protocol).

Compensation is obtainable from the tanker owner or the tanker's insurer up to an amount dependent upon the size (gross tonnage) of the tanker with the remainder obtainable from the International Oil Pollution Compensation Fund (IOPC Fund)[3].

2.2. For a pollution incident involving persistent bunker fuel carried by a tanker.

Compensation is also available up to a fixed amount. (approximately £730 million) under the same international compensation regime provided the tanker was carrying persistent oil cargo or has the residues of a persistent oil cargo onboard at the time.

2.3. For a pollution incident involving persistent bunker fuel carried by a tanker that has no persistent oil cargo or residues onboard or for non-persistent bunker fuel.

Compensation is available under a different international compensation regime ("the 2001 Bunkers Convention[4][5]"). The amount of available compensation is dependent upon the size (gross tonnage) of the tanker.

2.4. For a pollution incident involving non-persistent oil carried as cargo or other pollutants carried in bulk as cargo, for example hazardous and noxious substances.

Compensation is dependent upon establishing a valid claim under UK common law. The amount of available compensation is limited by a separate convention, the Convention on Limitation of Liability of Maritime Claims 1976 as amended by its Protocol of 1996[6][7] (LLMC 1996), dependent upon the size (gross tonnage) of the ship.

[1] IOPC FUNDS | 1992 Civil Liability Convention
[2] IOPC FUNDS | 1992 Fund Convention and Supplementary Fund Protocol
[3] IOPC FUNDS | Home
[4] International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER) (imo.org)
[5] International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 CM 6693 (publishing.service.gov.uk)
[6] Convention on Limitation of Liability for Maritime Claims (LLMC) (imo.org)
[7] Protocol of 1996 to amend the Convention on limitation of liability for maritime claims, 1976: London, 02 May 1996 CM 8281 (publishing.service.gov.uk)

2.5. For a pollution incident involving bunker fuel carried by a commercially operated ship other than a tanker.

Under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention), shipowners are strictly liable for damage arising from ships' bunker fuel and must maintain insurance to meet their liability which is calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 as amended by its Protocol of 1996.

It is necessary to commence action under this Convention within three years from the date when the damage occurred or six years after the date of the incident, whichever is soonest.

The Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The UK has national legislation to make owners of ships, other than those to which the Civil Liability Convention applies, strictly liable for pollution damage caused by bunker oil. Claimants do not have to prove that the shipowner was at fault.

Shipowners must maintain liability insurance and the compulsory insurance requirements of the Bunkers Convention applies to ship owners of vessels of 1,000 gross tonnes or greater.

2.6. For an incident involving other pollutants carried by a commercially operated ship other than a tanker, for example hazardous and noxious substances carried in containers on a container ship.

Compensation is dependent upon establishing liability under UK common law. The amount of compensation that may be paid is limited by the LLMC 1996, dependent upon the size (gross tonnage) of the ship.

2.7. For a pollution incident involving a government owned or operated ship, other than a ship used for commercial purposes.

Compensation may be available from the State concerned.

2.8. Amount of compensation available

Tanker owners generally have the right to limit liability to an amount determined by the gross tonnage of the tanker. This amount varies from about £4.3 million (US$7 million) for a small tanker (less than 5,000 gross tonnes) to about £86.25 million (US$139 million) for a very large tanker (over 140,000 gross tonnes).

Owners must maintain insurance cover for any tanker carrying more than 2,000 tonnes of oil as cargo to cover their potential liabilities. Tankers must carry a State-issued certificate on board to confirm that such insurance is in place. Most tanker owners obtain this insurance through a P&I Club. The Civil Liability Convention enables claimants to make their claims directly against the insurer.

The IOPC Fund is an intergovernmental organisation. It generally pays compensation to supplement that available from the tanker owner. In some rare cases, however, the Fund may meet all claims (for example, if the claimant cannot identify the tanker owner, or if the tanker owner has no insurance cover and is insolvent).

The UK fully joined the Supplementary Fund Protocol in September 2006. The Supplementary Fund makes additional compensation available when the total damage arising from an incident exceeds or is expected to exceed the limit of compensation available under the 1992 Fund Convention, namely 203 million SDR (about £ 194.7 million). When combined with the amount from the ship owner and the 1992 Fund Convention), the total compensation available comes to 750 million SDR, (about £719.5 million).

Oil pollution incidents do not only result in claims for clean-up and reinstatement costs. The four categories of claims are:

- Clean-up and preventive measures
- Property damage
- Economic loss
- Environmental damage

If the total of all valid claims exceeds the total amount of compensation available, claimants will only receive a percentage of their claims. Concerns in the early stages of an incident that this situation might arise can result in the P&I Clubs and IOPC Fund making initial payments at less than 100% of eligible claims. The Fund makes top up adjustments as the claims position becomes clearer. However, this situation is only likely to arise following major oil spills.

2.9. Claiming for Recoverable Activities

Following an oil spill, the tanker owner, their insurer, and the IOPC Fund generally pay compensation for the cost of response measures. These might include measures taken to clean up the oil at sea, to defend sensitive resources, to clean shorelines and coastal installations and to dispose of any recovered oily debris.

Claims for any consequential loss or damage caused by such measures should also be eligible for compensation. For example, if clean up measures result in damage to a road, pier or embankment, the cost of work carried out to repair the damage should be claimed and be eligible for compensation.

Admissible claims for clean-up operations include the cost of personnel and the hire or purchase of equipment and materials. The cost of cleaning and repairing clean up equipment and of replacing materials consumed during the operation is also admissible. However, if the responders purchased the equipment to be used for a particular spill, they cannot expect to receive 100% of the cost if the equipment still has a use at the close of operations. In this event the insurers and the IOPC Fund may make deductions for the residual value.

Compensation may be available for the costs of environmental advice. If the aim of the advice is to assist the clean-up operation (for example, by helping to identify the most appropriate response techniques in given circumstances), its costs in general qualify for compensation.

Compensation is also available in cases where there is no oil spill if there is a grave and imminent threat that pollution damage might occur. For example, the costs of mobilising clean up resources to the site of a tanker aground on a rocky coastline in bad weather would normally be admissible, even if a successful salvage operation subsequently prevents any oil from being spilled.

2.10. Impact Assessment

Compensation may be available for Impact Assessments, again depending on the source of the pollution. Operation of the International Oil Pollution Compensation Fund (IOPC Fund)

The IOPC Fund has developed a series of criteria for establishing whether claims are eligible for compensation. In relation to clean up and reinstatement operations, the fact that a government or other public body decides to take certain measures does not automatically mean that the Fund will reimburse the cost of those measures.

More generally, the following criteria would apply:

- the cost of the measures should be proportionate to the scale of the incident;
- the cost of the measures should not be disproportionate to the results achieved; and
- the measures should be appropriate and offer a reasonable prospect of success.

The IOPC Fund's claims manual summarises its criteria in more detail. This manual, and a general information booklet, are available online at http://www.iopcfund.org/publications.htm or from:

2.11. Small Tanker Oil Pollution Indemnification Agreement

Small Tanker Oil Pollution Indemnification Agreement and Tanker Oil Pollution Indemnification Agreement are special arrangements between certain tanker owners, the IOPC Fund and the Supplementary Fund to provide for a greater contribution to compensation by the ship owner.

These agreements do not affect claimants or alter the amount of compensation payable.

2.12. Pollution caused by other pollutants.

There are statutory provisions in force imposing liability and compensation for pollution damage by persistent oil and bunker fuels/oils. The ordinary rules of UK common law apply to liability and compensation for other pollution damage.

3. Pollution caused by offshore installations.

In the first instance, it is the appointed installation and well operators that are responsible for any pollution response caused by their activities. However, it is the licensee(s) that are financially liable for the prevention and remediation of environmental damage which is or may be caused by offshore petroleum operations undertaken by them or on their behalf.

Consequently, they must maintain insurance cover for the period of exploration and/or production activity being undertaken, including drilling operations, to cover first party risks such as well control; relief well drilling and removal of debris and third-party liability associated with compensation for pollution damage and reimbursement for remedial measures. The financial liability is joint and several amongst all licensees on a licence.

However, in the event a licensee, for whatever reason, is unable to meet its liability obligations, the provisions of the Offshore Pollution Liability Agreement (OPOL) may come into effect. All licensed operators currently active in offshore exploration and production on the UKCS are party to a voluntary compensation scheme known as OPOL.

DESNZ requires, as part of its licence approval and permitting processes that all licensed operators become a party to the OPOL Agreement or have liability cover of the same value as that offered by OPOL.

Under the OPOL process, licensee(s) accept strict liability (subject to limited exceptions), up to a maximum of US$250 million per incident, comprising US$125 million to cover pollution damage claims and US$125 million for remedial measures claims. OPOL administers the provisions of the Agreement, under which participating licensed operators accept strict liability for pollution damage and remedial measures up to a maximum amount per incident.

Operators under the OPOL Agreement must provide evidence of financial responsibility in respect of their obligations to claimants, subject to the limits in the Agreement, but the OPOL Agreement does not preclude claimants from seeking redress in the Courts for losses incurred. If a licensed operator fails to meet their obligations to claimants under the OPOL Agreement, then the remaining licensed operators, who are parties to the OPOL Agreement, have agreed to guarantee payment of claims up to the maximum aggregate amount of US$250 million per incident.

The OPOL Agreement covers offshore installations, pipelines and wells being used for the purpose of exploring for, producing, treating, storing or transporting oil from the seabed or its subsoil; any well used for the purpose of exploring for or recovering gas or natural gas liquids from the seabed or its subsoil during the period that any such well is being drilled or worked on; and any installation used for the above purposes which has been temporarily removed from its operational site for whatever reason.

4. Pollution from an unidentified source

Generally, claimants can only obtain compensation if they know its precise source. However, there is one exception to this.

The IOPC Fund pays compensation for pollution damage if the claimant can prove (for example, by sophisticated chemical analysis) that the pollution resulted from a spill of persistent oil from an unidentified tanker.

In most cases the MCA would commission a chemical analysis in an attempt to determine the source of the pollution.

5. Joint Claims

For smaller incidents the MCA are prepared to lead on cost recovery action across the public sector and specifically for bodies identified in this NCP. However, it is still necessary for claimants to follow the advice provided in this document. The decision for the MCA to lead is taken on a case-by-case basis and subject to agreement by all parties at the time.

The MCA's extensive experience in claims suggests the following items of best practice:

- any expense must actually have been incurred and third party invoices provided;
- response measures must be reasonable, proportionate and justifiable;
- there needs to be a summary of events – a description and justification of the work carried out at sea, in coastal waters and on shore – together with an explanation of why the various working methods were selected;
- for chartered vessels, investigate the rates quoted and look at the SCOPIC tariff rates;

- apply the industry standard of 100% of hire rate for in-use and 50% rate for stand-by;
- ensure MCA's contractors, or local authorities acting on behalf of the Agency, apply the MCA policy for equipment hire charges when acting on behalf of MCA in response to an incident;
- keep a record of the dates on which work was carried out at each site; in this context, date and time stamped photographs are extremely useful;
- keep a record of the number and categories of response personnel, regular or overtime rates of pay and who is paying them;
- keep a record of the travel, accommodation and living costs for response personnel;
- keep a record of the equipment costs for each site: types of equipment used, rate of hire or costs of purchase (bearing in mind residual values to be deducted), quantity used, period of use (in use or standby);
- ensure that any damaged equipment is photographed and assessed by an independent body prior to repair or replacement;
- during cleaning or restoration of equipment or vessels, they should not be brought to a state better than at the commencement of the hire/charter;
- keep a record of materials consumed in the response, for example, sorbent and dispersant;
- keep a record of the cost of temporary storage, transport, treatment and disposal of waste; and;
- keep a record of any other incident specific cost relating to the response in any way, eg oil analysis, reinstatement, impact assessments, etc.

6. Record keeping

For the purpose of financial record keeping, it is essential to appoint a financial controller at a very early stage in the incident to keep adequate records and control expenditure.

Responders should not discard any relevant document (including status board information and maps used by the SCU, OCU, MRC and SRC) and all data should be backed up and catalogued on a regular basis – at least daily.

It is not possible to specify the precise form of records, this varies with the circumstances. However, there are two points to keep in mind: records of any incident act as the source material for many incident related purposes; and since responders cannot know the particular purpose that records will serve in advance, record keeping should err on the side of too much rather than too little detail.

The record should clearly show information received, decisions taken, orders given, and action taken. For example, responders may use aircraft for reconnaissance.

In this case, there should be a record not only of when they called the aircraft out but of take-off times, landing times, details of any oil found, the area searched, who was on board the aircraft, who received the information and when.

For dispersant spraying operations, records should specify the area of operations and indicate the duration of spraying, the amount, type, age, and efficacy of dispersant used, and the results obtained.

As a further indication of the level of records required one example would be for the hiring-in of an item of equipment, the hirer should seek to clarify the following items:

- member of staff that authorised and placed the order;
- the reason for hiring the equipment;
- date and time item actually hired;
- organisation hired from;
- evidence of any research relating to cost of hire
- quantity of each item actually hired;
- for larger pieces of equipment (particularly chartered vessels) it would be useful to take photographs of the condition of the item prior to use for response activities;
- if more than one item of any type is hired, devise a system for unique identification;
- how it was delivered / transported;
- where it was actually delivered to;
- who took delivery;
- a daily activity record of what the item was used for, including the location of use;
- if item is damaged – photograph damage;
- brief description of how the damage occurred;
- do not repair until approval or advice has been reached with an insurance representative on site (i.e. the SCR or a surveyor appointed by the insurers);
- dates actually used for the response;
- dates the item was on standby at the scene of the incident;
- date off-hired;
- condition of the item when returned to owner; and
- no betterment of equipment on return to owners.

Record keeping requires a heavy commitment in terms of minute takers, message takers, procurement specialists and financial experts. There are specialist firms that offer tracking and recording services for clean-up operations and the appointment of such a firm may be justifiable following a major spill from an oil tanker. In such a case it should be possible to recover the cost of using such firms, or temporary agency staff, from the shipowner, insurer and/or the IOPC Fund.

It is important to record decisions and the opinions of all the parties involved in addition to agreements or points of disagreement. This applies equally to ITOPF who report to ship owners, P&I Clubs and the IOPC Fund and are likely to offer advice to all parties involved in the response on counter pollution operations. It applies also to others such as cargo owners, local authorities and the Environment Group. The records should show whether they agree or express no opinion. If they disagree, the records should identify the reasons, if possible. Records should distinguish criticism made at the time of an incident from criticism made with the benefit of hindsight.

Like any operation involving the expenditure of large sums of money, the usual rules of proprietary, accountability and the need for a fully detailed audit trail apply.

Submitting a claim

Claimants should initially submit claims for clean-up costs to the ship owner and/or to the relevant P&I Club. If claimants have any difficulty obtaining this information, they should seek advice from MCA's CPS Branch (or DfT's Maritime Safety and Environment Division.

The P&I Clubs do not publish formal guidance on their requirements for submitting claims, but the guidance in this appendix and the IOPC Fund's claims manual should generally be appropriate.

Claimants may also find the EU Claims Management Guidelines useful. This document can be accessed here EU States Claims guidelines_V3.pdf

Where relevant the IOPC Fund co-operates closely with the relevant P&I Club in assessing and settling claims. In an incident involving the IOPC Fund, claimants should submit full supporting documentation to the tanker owner, the P&I Club or the IOPC Fund.

Claimants should notify the IOPC Fund of any claim they have submitted to the owner or P&I Club. 19 When an incident gives rise to a large number of claims, the P&I Club and the IOPC Fund may jointly set up a local claims office to process claims more easily. If such a claims office is established at the scene of an incident, claimants should submit their claims to that office.

The local press should carry details of how to submit claims. The designated surveyor and the joint claims office refer claims to the P&I Club and to the IOPC Fund for decisions on their admissibility.

The IOPC Fund Claims manual can be accessed at 2019-Claims-Manual_e-1.pdf (iopcfunds.org)

7. General – All Claims

Claims should be in writing and must contain the following particulars:

- the name and address of the claimant, and of any representative;
- the identity of the ship or offshore installation involved in the incident;
- the date, place and specific details of the incident if known;
- the type of pollution damage sustained
- the nature of the operations, or response measures, for which the claimant is seeking compensation; and
- the amount of compensation sought.

Supporting documentation should link all the expenses (including disposal) to the actions taken at specific sites.

8. Time limits for claims arising from pollution from tankers

Claimants should aim to produce their claim at the earliest opportunity – if need be in draft form initially. Claimants should be aware that there are time limits for claims under the 1992 Civil Liability Convention, the Fund Convention and the 2001 Bunkers Convention. The conventions provide that claimants must secure their claims by taking legal action against the shipowners within three years of the date on which loss or damage occurred and in any case within six years of the date of the incident.

Wherever possible, claimants should seek to have their claims settled within these periods. If this is not possible, claimants may protect their claims by taking legal action against the tanker owner, the owner's insurer and the IOPC Fund. Should this be necessary, claimants should seek legal advice.

Formal legal action to enforce a claim is usually the last resort. In most cases, informal negotiations result in a settlement. Given the time limits for legal enforcement of claims, it is in everybody's interest for claimants to submit claims as soon as possible after the incident. Often, considerable time is required to compile a claim and all the substantiating evidence. If claimants anticipate delays, they should notify the tanker owner's insurers and the IOPC Fund at an early date of the intention to submit a claim at a later stage.

9. Time limits for claims arising from pollution by persistent oil carried in ships other than tankers

Again, claimants should aim to produce their claim at the earliest opportunity as there are time limits for claims under the 2001 Bunker Convention. Claimants must secure their claims by taking legal action against the shipowners within three years of the date on which the loss or damage occurred and in any case within six years of the date of the incident. Where the incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

10. Financial Security

When an incident occurs, the accident and all details available, are given promptly to the insurers and owners of the casualty. The MCA Resource and Claims Manager informs the insurer at this early stage that the MCA's intention is to make a claim and requests financial security for the money that the MCA is committing.

From experience, this is generally achieved verbally by telephone from the scene of an incident. If it is subsequently found that the financial security requested was inappropriate or unnecessary, the security would be returned to the insurer, i.e. Bunkers Convention or Civil Liability Convention applies.

This financial security can take several forms but in most cases is a Protection and Indemnity (P&I) insurer's Letter of Undertaking (LOU). The wording of this Letter needs to be amended according to the type of charter / ownership of the vessel and legal advice should be sought if necessary. This document makes the MCA's position clear to the insurers and shipowners. If the MCA are not provided with financial security during the incident, as a last resort, legal action would be taken to underwrite the financial exposure by arrest of the casualty or freezing of the hull assets. In certain circumstances it is also possible that a harbour authority or similar body involved in an incident may request an LOU.

Two possible forms of financial security are a Letter of Undertaking and a Bank Draft, each of which require an amount of money to be included in the document.

The MCA estimates a figure based on previous incidents, the estimated length of response and a figure for refurbishment and return of resources to the appropriate site. Generally, at this stage an uplift is included in the level of financial security requested from the P&I for unforeseen costs.

Most P&I personnel are experienced and are well aware that the estimation of costs at this stage is not an exact science but it helps later settlement discussions if the figure given here is as close as possible to the quantum of the final claim.

This procedure is followed as a matter of routine for MCA personnel for incidents that fall outside the scope of application of the Civil Liability Convention as they are adequately covered by International Conventions. Depending on the provider of the financial security, the preferred form of security might be a bank draft.

The LOU also clarifies the jurisdiction for any subsequent legal action to recover costs, and the MCA's preference for any such action would be the UK.

When the MCA response team return to headquarters it is necessary, to back up the financial security provided, by forwarding a letter to the ship owners, with a copy to the relevant P&I Club, informing them that a claim under the Merchant Shipping Act will follow in due course.