



BSS Advisory Committee – Confirmed Notes

BSSAC #97, 14 NOVEMBER 2017, CRT OFFICES, HATTON

Present:

Chair
BM1 – BM Executive Interests
YDSA
RBOA
IWA
Canal & River Trust
RYA Executive Interests
BSSTC Chair
AWCC
NABSE
ABSE
BM3 - BM Boatbuilding
TBA
BM2 – BM Hire Boats

Co-opted & Others:

BSS Manager & Secretariat

Apologies:

EA
IIMS
NABSE
BM1 – BM Executive Interests
NABO

Vacancy:

AINA Rep
Broads Authority

97.1 Apologies and introductions

- 97.1.1 Apologies were as listed above. ***** attended for ***** BM1-BM and ***** attended for ***** NABSE.
- 97.1.2 Members acknowledged the passing, in October of ***** aged 65. Members agreed that he will be remembered for his sharp intellect, real insight and a desire to contribute and make boating safer. He started on our BSS Technical Committee representing NABO for almost exactly 15 years ago; he moved on to BSSAC and relished his BSSMC role in more recent years.

97.2 Notes of last meeting

- 97.2.1 The unconfirmed notes of the last meeting, *Doc K1, BSSAC #96* were accepted as accurate.
- 97.2.2 The RBOA raised the lateness of the notes. It was agreed that improved timeliness of the notes was important.

97.2.3 Matters arising

- 97.2.3.1 **96.2.2.4 The inclusion of third-party managed shared ownership vessels within the scope of BSS hire boat checks** – The debate can be summarised as follows:

a) Legal advice pending - In response to a question from the BM3 rep the Chair said that resolution had not been achieved yet albeit that the process of achieving legal advice is underway.

Further assessment of this issue is required, including legal advice concerning the legality of the BSS position based upon i) risk review, any

associated duty of care the navigation authorities have in this respect and ii) the wider regulatory environment (including the Merchant Shipping Acts) and whether it limits the ability of BSS to apply risk-review outcomes.

b) The Chair identified the further complexities involved, all of which made it unreasonable to expect BSS Examiners to resolve the issue. Complexity questions may include, is this shared ownership or timeshare? Secondly, if purchasing a share of the boat, is there any contract for maintenance and if yes, does the third party mean that there is a commercial interest in the boat? Thirdly, what if the builder, owner, or managing agent retains an interest in the boat itself, for example, where not all the shares are sold or where there's a buy-back scheme.

c) Other influences

- The lack of detailed navigation authority licence classes was also referred to, as was the ultimate responsibility with the licensing authority to determine the conditions upon which any boat is licensed.
- Also referred to was Examiners beset by external regulation as discussed at the last meeting, and the jeopardy they are in particularly concerning non-Gas Safe registered Examiners and boats in scope of the Gas Safety (Installation and Use) Regulations.
- Mentioned was the risk review outcome, indicating that some shared owners will be subject to the same level of risk as hirers and the Chair referred to the concept of shared responsibility for risk management, and hoped that the trade will engage in a positive way to help achieve resolution.

Once a) and b) have been moved forward resolution will be at hand.

97.2.3.2 **96.2.2.5 - Hire Boat Code (HBC) development** – The BSS Manager reported that the plan, as owned by AINA/BM and MCA is to agree a revised and updated Hire Boat Code by the end of the year. It was anticipated that there would be a need to meet to agree the consultation process. The consultation process is to be run by MCA

The situation in respect of the references to stability in the code are somewhat dependent on the work BSS has commissioned with a specialist naval architect company to answer the question whether the existing BSS hire boat downflooding height requirements (10.7.3) can be considered suitable alternative to enforcing comprehensive post-construction stability and freeboard requirements on 'low-risk' inland waterway hire boats. The interim report from the commissioned naval architects is anticipated before the end of November

97.2.3.3 **96.2.2.1 – CO 'Trusted Messenger' initiative** - The BSS Manager reported that the project is further delayed. As before, the contractor JIGSAW is working on an initiative that will involve a larger-scale public information campaign on making CO a recognisable risk, (e.g. smoking in public places). JIGSAW's focus is on delivering a clear, simple message to Examiners and simple supplementary material that can be shared by Examiners with the boat owners they serve.

JIGSAW believes the key for BSS is to engage individuals with the risks and consequences of CO poisoning and then lead them into finding out more, rather than presenting a large amount of technical information at the outset. The 'blue book' is an excellent resource and provides clear and easy to follow recommendations / actions, but JIGSAW say that it is a resource for the boat owner who understands that CO is an issue and has decided to take steps – we are trying to bring unaware boat owners to this level of action.

The public-facing course content is being scripted (including interactivity and graphics) using the concept blueprint. Once the overall approach and training material is nearly finalised, a proposal document (to include the planned CO leaflet owner self-checklist) can be developed encapsulating the practical arrangements and be shared by email with the Sub-group that previously met. Sub-group members can then comment on the proposals.

- 97.2.3.4 **96.2.2.2 - Reviewing BSS requirements for the non-private classes of boats that are not hire boats** – The BSS Manager said there was no action to report. The contactor is awaiting any incident data from AINA and WAID and is reviewing any useful reference material – such as BM’s Marina Workboat Guidance Note.
- 97.2.3.5 **96.2.2.6 BSS Hazardous Boat Notification procedure review** – The BSS Manager said there was no project start date in sight yet.
- 97.2.3.6 **96.2.2.7 - Examiner Body Rep vacancy on BSSMC** – the BSSAC examiner body reps, by a majority of three to one, voted in the BSSAC current IIMS rep as the BSSMC Examiner Body Rep.
- 97.2.3.7 **BSS Business and Technical Manager vacancy** - The BSS Manager reported that the recruitment process to take on ***** replacement started as soon as she left in early July. Interviews took place on 18 August and, following a re-advertisement, on 3 October. An individual has been offered the vacancy and a start date on 2 January 2018 has been agreed. [Subsequently identified as *****, previously with British Marine]
- The BSS Manager reported that the impact of the staff shortage has been significant, and it is predicted that the impact will continue well into next year to cover the envisaged period for induction of the new team member.

97.3 To note activity concerning BSSMC

- 97.3.1 BSSMC Exec Panel recently undertook three case reviews concerning BSS Examiners and associated alleged breaches of the [BSS Examiner Conditions of Registration.
- 97.3.2 A Sub-group made up of BSSAC and BSSTC Chairs and a Navigation Authority Rep have developed a draft of a revised BSSMC ToR document.

97.4 Escalation in formal complaints about examiner performance

- 97.4.1 Paper [D1, BSSAC #97] was circulated in advance of the meeting for information and discussion outlining the significant impact on staff and other BSS resource, of an escalation in formal complaints about examiner performance during 2017. The number of complaints is up from an average of 12 annually (for the previous 5-year period) to 30 for the year to date. One key fact reported was that 16 are ‘examiner on examiner’ complaints.

The paper drew out the features from the complaints to date, one of which is the complexity of some of the cases and the far from clear-cut investigation conclusions. For example, when examiners refute the allegations involving one person’s word over another, or where they fail to co-operate with the investigation, then it requires careful handling, legal advice and sensitive determination by the BSSMC Exec Panel.

The conclusions were generally supported by BSSAC Members, namely that:

- a) The increase in ‘examiner-on-examiner’ complaints is in general a good thing and is regarded as an essential part of the Scheme’s quality assurance drive.

- b) The prediction that the rate of 'examiner on examiner' complaints is unlikely to diminish, partly because of the positive outcomes of such engagements during this year to date.
- c) The Examiner Development Strategy recognises that there should be a facility to grade the information received from Examiners between i) intelligence to take account of and ii) formal complaints supported by owners. It is clear that 14 of the 16 'examiner on examiner' complaints were of a level of significance that should fall into category ii).
- d) With the increase in the number and complexity of the complaints has come an acceptance that BSS complaints administration has been overwhelmed and so the only conclusion to draw is that it is not sufficiently resourced in that the case investigations have generally not been concluded in a reasonable timescale.
- e) It is envisaged that this increase in complaints is not likely to diminish and accordingly the next 4-year plan must seek to manage complaints handling more effectively using external contractors to, in part, carry out case investigations.
- f) The experience of these complaints also highlights the essential need for effective quality assurance measures including increased proactive monitoring. It increases the priority to deliver this activity presented in the Examiner Development Strategy.

The paper drew attention to one case reviewed where the BSSMC Executive Panel have asked for an amendment to be considered concerning Clause 12.2 of the BSS Examiner Conditions of Registration (CoR) concerning ensuring examiners co-operate with formal investigations. Majority support for the CoR amendment suggestion in principle but leant towards published guidance on the Examiner Support Website being used to address the concerns maybe as an interim measure.

97.5 BSS Strategic Plan 2018-22

97.5.1 The BSS Manager reported that the BSS Office vision of a four-year plan is currently with BSSMC Exec for consideration. The vision was not divulged in any detail as this would have been inappropriate until the BSSMC Exec have had a chance themselves to think about it and possibly change the draft. It was however reported that the direction, purpose and methodology of the BSS, as set out in the Navigation Authority Agreement, is recommended to remain fundamentally unchanged over the planning period.

There was a representation that the activities that drive efficiency, effectiveness, sustainability, cost reduction over time must be resourced, planned and agreed. A number of these activities present challenges over this planning period. The main ones were reported to be these:

- a) Essential improvements aimed at ensuring examiner consistency, as identified in the Examiner Development Strategy
- b) Essential changes to the Scheme's cloud-based facility Salesforce; some planned in support of the above activity, and some enforced
- c) Essential additional resourcing of the formal examiner complaints investigation process
- d) The essential need to plan to be resilient to both known and possible changes in BSS Office team personnel

BSSAC member organisations were again invited to express any views about how they see the Scheme during the next four years, in advance of BSSMC's December meeting. In general terms, members were supportive of the need

for the Scheme to be properly resourced

97.6 RCD II, the key changes and its impact on BSS

97.6.1 A paper was circulated in advance of the meeting and this had the benefit of British Marine executive comments. RCD II (2013/53/EU) was implemented fully into UK law 3 August 2017 (Recreational Craft Regulations 2017 SI 737) and can be viewed as a tightening up of the framework to demonstrate compliance. It includes added responsibilities for anyone involved in the supply of a boat to the market and even brings in responsibilities post point of sale, as a major modification affecting the configuration, power, dimensions, or stability of the craft would lead to a Post-Construction Assessment using a Notified Body.

Members heard that previously, licensing authorities chose to be guided by the BSS, in respect to their licensing policy and is clear that guidance on the impact on licensing conditions of RCD II is again being sought.

A long debate took place and members were thankful for the inputs from British Marine in the paper and from the BM3 and RYA reps at the meeting. The following is a summary of agreements.

- a) It was recognised that RCD II is likely to take some time for the changes to filter through to the boat building and supply industry, indeed even amongst industry insiders there is a degree of uncertainty and people have different views. There is likely to continue to be some confusion for some time to come partly because Annex IIIA declarations become Annex III declarations and Annex XV Declarations of Conformity become Annex IV Declarations of Conformity, and there are differences.
- b) The issue for the Navigation Authorities boat licensing departments is that the previous apparent clarity between part-completed boats and fully completed boats (RCD I, Annex IIIA and Annex XV respectively), is now eroded.
- c) Part-completed craft ('Sailaways') – any boat put on the market and into use as a recreational craft must meet all the relevant essential requirements of the RCD for that vessel or it must not be CE marked. A boatbuilder may sell a vessel with an Annex III Declaration to a private individual but that vessel must not be 'put into use' as a recreational vessel until it is CE marked.
- d) BSSAC members were of the opinion that RCD I Annex IIIA declarations should cease to be accepted in support of licence applications after a reasonable period has elapsed to allow builders to adopt the changed RCD II Annexes and to allow any such Annex IIIA declarations in the system to filter through. A cut-off date of August 2018 was suggested. The basis of the advice is that RCD I Annex IIIA declarations no longer exist in law.
- e) BSSAC members were of the opinion that RCD II Annex III declarations should not be accepted in support of boat licence applications unless the boat was purely a shell that could not be put into use. The basis of the advice is that such declarations confirm in law that the boat can't be put into use as a recreational craft and so in essence it is not a boat that can be navigated.
- f) For Sailaway boats it is suggested that the licensing authorities should demand the Annex IV Declaration of Conformity (that is part of CE Marking) or accept BSS Certification (see more below under 'Completed boats').
- g) There will be customers who want to put a shell on the canal or river for it to be worked on, completed and CE marked. The licensing authorities will

need to consider the conditions upon which such boats can be licensed, it could be on the basis of an RCD II Annex III declaration; but if the boat were to be 'put into use' then the licensing conditions would be breached. Once the boat is about to be put into use licensing must be supported by an RCD II Annex IV Declaration of Conformity or BSS Certification.

- h) Completed boats – The situation concerning completed, and CE marked boats is unfortunately just as complex. This is particularly so concerning the narrowboat market and it is because a boat that is part-completed must be supported by an RCD II Annex IV Declaration of Conformity and be fully CE marked if it is intended to be put into use in that condition, for example 'Sailaways' having an engine and not much else.
- i) Previously Sailaways will have been supported by an RCD I Annex IIIA declaration and that would support a licence for up to one year. The presumption being that additional systems would be added in that first year and so BSS Certification after a year is a reasonable position. Now the same Sailaway, having an engine and not much else but intended to be put into use, will have an Annex IV Declaration of Conformity and be fully CE marked. Members heard an anecdote about a narrowboat shell having nothing but interior spray-foam insulation being (wrongly) CE marked.
- j) Members also heard that a narrowboat built with a gas locker could be CE marked with the builder declaring conformity to the gas Essential Requirement purely by having constructed a gas locker for the future gas cylinder and gas system components. Neither of these examples would provide the Navigation Authorities with an assurance that the risk was being effectively managed.
- k) It was concluded that there would be an added risk for the Navigation Authorities if they were to accept RCD II Annex IV Declarations of Conformity for the first four years of the life of a part-completed CE marked boat.
- l) BSSAC members were of the opinion that the Navigation Authorities will need first to establish on the application form whether any new boat is 'fully completed' (i.e. no systems need be added, i.e. gas, electrical, fuel systems or solid fuel stoves etc) or 'Sailaway' (i.e. systems are intended to be added). If the 'fully completed' box is ticked, then the RCD II Annex IV Declaration of Conformity can be used to support the licence for the first four years. If the 'Sailaway' box is ticked, then the RCD II Annex IV Declaration of Conformity can only be used to support the licence for the first year.
- m) If there is any doubt the default position should be only to accept the Annex IV Declaration of Conformity for the first year.
- n) Note however that legal advice may be necessary or at least engagement with the Department for Business, Energy & Industrial Strategy as British Marine consider that even asking the any question about the status of a CE marked boat could be regarded as acting in conflict with the RCD.
- o) The classification of shells that can't be used as a boat will also need to be established at point of licence application and appropriate licensing conditions applied.
- p) DIY boats – a very small number of boats maybe built in back gardens for the builder's own use and may never reach the market. DIY vessels are excluded from the RCD, and therefore BSS Certification should support the licensing application, as previously.
- q) Post-Construction Assessments (PCA) – Concerning any boat having undergone an in-service PCA it is not recommended that the PCA be accepted in lieu of BSS Certification. This is because there will be no

assurance that the condition of all existing system components or equipment will have been assessed to the extent that BSS checks are undertaken. It is recommended that the allowance to accept CE documentation in lieu of BSS Certification continues to be limited to the new boats about to be licensed for the first time.

- r) The above BSS stakeholder commentary and advice is intended to aid discussion at AINA and it is recommended that British Marine executive staff be involved in establishing the agreed position.

97.7 Report from BSSTC Chair

97.7.1 The BSSTC Chair introduced his report (*Doc F1, BSSAC #97*) saying that he was concerned about the general level of progress of project delivery. He said that his main aim was to close the hire boat ECP implementation by ratifying them and producing controlled versions of the documents for insertion into examiner's folders.

97.7.2 There is a need to decide on the MAIB Love for Lydia recommendations. The BSSTC Chair reported that some environmental testing was being done by BRE (Buildings Research Establishment). Testing over two or three days should help BSSTC members decide whether to recommend CO alarms on all boats due to a third-party risk. Emission sources will include boat diesel engines, portable petrol generators, diesel-fuelled heaters, solid fuel stoves. The measurement location will be looking at the source boat inside, third party receptors, including adjacent boats; nitrogen oxide and some airborne particles will also be measured.

The IWA rep read out the IWA policy to support the introduction of CO alarms as a BSS requirement and said that IWA had consulted with the RBOA, RYA and AWCC in developing the policy.

In answer to calls from some user group reps for an urgent introduction of CO alarms the Chair said that the Scheme is not here to impose requirements on people that are not evidence-based. We have heard the user view in the past, but we've heard other advice from other people around this table, and from other groups in the class that is not the same. However, he recognised that Love for Lydia is the first occasion where carbon monoxide poisoning has occurred where there was not a fault with the appliance that generated the carbon monoxide or fault with the owner's use of their boat.

97.7.3 The BSSTC Chair indicated his keenness to finalise the new BSS LPG bubble leak indicator test procedure in order that the BSS Examiner LPG update course can be rolled out.

97.7.4 The interim ECP review was being moved forward and needed to be concluded. The electrical ECP change suggestions have been worked through. There is no direct urgency but it is another task that must be concluded. In answer to a question it was reported that ECP interpretation issues do not feature in formal investigations of examiner performance. The BSSTC Chair said that as part of the review, he was on the look-out to remove ECPs where any don't have any value anymore.

97.8 Quarterly BSS Quality Management Activity Report

97.8.1 The Chair requested any comments concerning the Quarterly BSS Quality Management Activity Report [*Doc E1, BSSAC #97*]. A question was raised about a reference in the examiner newsletter to a summer data protection course and whether it should be in the report. The BSS Manager said that this was an omission; he reported that the GDPR regulations come in 25 May 2018 and the training needs to have been implemented by then. The plan is a

specific eLearning experience lasting around 20 minutes compulsory for all examiners.

97.8.2 Examiners Development Strategy Update – The BSS Manager reported that the improvement initiatives have slowed since the BSS Business and Technical manager left but that examiner recruitment experience/qualification thresholds remains a primary focus. He reported that of 43 applicants have expressed an interest to become examiners, only 24 have been accepted to meet the new higher criteria. The majority of rejections are on the lack of formal qualifications or experience. He reported a number of examiners have left this year so far and that more are expected to leave up to March. Monitoring will continue to ensure that the Scheme is not left vulnerable by reducing numbers over the geographic region.

Asked about total BSS Examiner numbers it was reported that this stands at around 213 and that there are no holes in the geographic coverage but there is a threat to coverage in the Inverness/Fort William area on Scottish Canals.

Other matters reported on:

- a) Examiner survey, is planned to take place in the spring, a draft survey will be provided to BSSAC in advance of it being launched and to all BSSAC examiner body reps in advance of it arriving at BSSAC.
- b) The improved initial examiner training course has been slow to develop and will gradually gain momentum in the first and second quarters of 2018. The NABSE rep questioned the need for more examiners and said it is better to have less examiners doing more examinations. Examiner consistency, professionalism, profit margins, are all at stake if less examinations being done by existing examiners.
- c) Field assessment process, we working to planned improvements as previous set out in updates.
- d) Essential Guide, is put on hold for this financial year other than an editorial job on the existing Guide is being delivered. The plan for the next financial year is to deliver it available to print on demand and online through tablets and phones.
- e) The planned examiner support website enhancements could happen this financial year if there's any headroom in the budget leading up to March.

97.9 Report from the BSS Manager

97.9.1 The BSS Manager introduced incident report *Doc G1* and commented about the reported CO death on Jersey. It doesn't appear in the figures because Jersey is not in the UK but the incident is of great interest because the report concerned circumstances that were quite similar to Love for Lydia.

97.10 Items for BSSMC

97.10.1 Shared ownership and BSS hire boat requirements, BSS resourcing, the CoR amendment proposal and RCD II.

97.11 To agree the following provisional dates of the 2018 BSSAC meetings

97.11.1 The provisional dates were agreed and are now confirmed (*Post meeting note the first meeting date was amended to Monday 5 March*).

97.12 Any other business [AOB]

97.12.1 The ABSE rep raised the subject of CE marked boats having had licenses supported by RCD documentation for the first four years. He said that he has a wealth of evidence that proves that new/four-year-old CE marked boats are generally not BSS-compliant and if the navigation authorities continue to allow licensing of those boats then they and the Scheme is complicit if/when an incident occurs.

The BSS Manager showed a series of PowerPoint slides drawing information from the BSS Database (Salesforce), looking at BSS failure rates by various sectors. The data indicated that the failure rate for boats at their first examination from new (23%) for Annex XV boats and 32% for Annex 3a boats was less than the mean average failure rate across all boats of 36%. Boats new to the inland waterways from the coast had a failure rate of 53%, and was the worst represented sector.

One thing to note is that Annex XV boats accounted for only 1,138 and out of the total of 58,000, and only 400 boats were recorded as having been examined after having an Annex 3a declaration, for the period from April 2015.

The ABSE rep said he would be interested to learn if the failures on the new boats were attributable to a builder not applying the support ISO standards appropriately. The BSS Manager said this aspect had not been assessed, partly because the risk profile did not warrant further assessment and partly because it would be difficult to establish when the fault had been introduced.

The BM2 rep said any suggestion that a boat was not CE compliant when built should be addressed to Trading Standards and it was not a matter for BSS.

Members agreed the following approach:

- a) The matter would be added to the BSS Risk Register, which will bring it in BSSTC focus for periodic raising and any change to the current situation handled accordingly;
- b) The ABSE rep would provide further information or intelligence, specific to individual boat builders to the BSS Office. This information could then be assessed, and an appropriate course of action developed.

It was reported that individual builders had been approached before (generally by the owner) when what has been found by an Examiner represented an obvious safety shortfall, for example a gas cylinder locker with no locker drain facility.

The Chair added that the Scheme can't eliminate all risks or act outside of its remit. At the moment, the risk picture doesn't raise an alarm to say that anything truly significant is happening and matters can be addressed where the individual case supports action.