

**The Highland Council**  
**Community Services Committee**  
**7 December 2016**

Agenda Item	<b>3</b>
Report No	<b>COM 52/16</b>

**Role and Appointment of Duty Holder**

**Report by Director of Community Services**

**SUMMARY**

This report advises Members of the requirement and role of an appointed “Duty Holder” within the meaning of the “Port Marine Safety Code”, how the role was fulfilled in the past and provides options on how the role could be fulfilled in the future in light of the recently reissued Port Marine Safety Code, opinion from Counsel and examples from other Local Authorities.

**1. Introduction**

- 1.1 The original Port Marine Safety Code (PMSC) was developed in 2000 following a significant oil pollution incident at Milford Haven in 1996 when the “Sea Empress” ran aground trying to enter the port and spilled over 75,000 tonnes of crude oil.
- 1.2 The PMSC offers a national standard for port safety in the UK with the aim of improving “safety for those who use or work in ports, their ships, passengers, cargoes, and the environment”.
- 1.3 Although the PMSC is not a statutory instrument all Harbour Authorities are expected to comply and failure to do so can lead to prosecution under other relevant legislation such as the Merchant Shipping and the Health and Safety at Work Acts.
- 1.4 The Code is reviewed every three years by a steering group of maritime organisations and has been reissued in 2003, 2006, 2009, 2012 and most recently in November 2016.

**2. Duty Holder**

- 2.1 The role of “Duty Holder” within the meaning of the Code is a significant one, being described as being responsible and accountable for ensuring the Harbour Authorities compliance with the Code. The Duty Holder chapter of the 2016 Port Marine Safety Code is attached at **Annex A**.
- 2.2 Some differences in the management of Trust and Municipal ports are apparent and Paragraph 1.7 specifically refers to the management of municipal ports recognising to some degree that local authority management structures vary from those of Trust and Private ports and that their management and Boards may have limited decision making powers. Subsequently noting that a Team or Board may not be directly accountable for marine safety and that accountability may be

overseen by a committee.

1.7 *If however, the management team or board is not directly accountable for marine safety, or has limited decision-making powers in this respect, it is acceptable for the role of duty holder to reside elsewhere. This might be the position in some municipal ports for example, where accountability for marine safety is overseen by a local authority committee. If so, the organisation should publish and confirm who the duty holder is.*

2.3 The responsibilities of the Duty Holder are stated in section 1.8 of the Port Marine Safety Code as:

1.8 *The duty holder is responsible for ensuring that the organisation complies with the Code. In order to effectively undertake this role they should:*

- *be aware of the organisation's powers and duties related to marine safety;*
- *ensure that a suitable MSMS, which employs formal safety assessment techniques, is in place;*
- *appoint a suitable designated person to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety;*
- *appoint competent people to manage marine safety;*
- *ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set; and*
- *report compliance with the Code to the MCA every 3 years.*

### 3. Examples of Local Authority Duty Holder

3.1 In the past the Highland Council nominated Duty Holders have been the Head of Transport and Infrastructure and the Head of Roads and Transport. Other Local Authorities have addressed the matter according to their own management and service design and a few examples are shown below:

Dumfries and Galloway	Economy, Environment & Infrastructure Committee
Cornwall	Full Council
Orkney	Harbours Board
Western Isles	Transport and Infrastructure Committee
Moray	Full Council
Aberdeenshire	Infrastructure Services Committee
Angus	Communities Committee
Argyll & Bute	Executive Director of Development and Infrastructure

3.2 In general Local Authority trend appears to favour Committees in the role of Duty Holder, with officers entrusted to deliver the functions of Marine Professionals.

#### 4. Counsel Opinion

- 4.1 Determining the ideal Duty Holder is a complex matter for a Local Authority and one that needs careful consideration to satisfy legislative requirements. To assist with the process the Head of Corporate Governance sought the opinion of Counsel which is attached at **Annex B**.
- 4.2 Counsel has attempted to address two issues, accountability within the Local Authority legal framework and advice on the selection of Duty Holder to satisfy the latest guidance.
- 4.3 On the matter of accountability and liability Counsel's opinion is that under local authority legislation the principal responsibilities remain with the Council in the corporate sense and this agrees with the opinion provided by the Head of Legal Services in 2001 attached at Annex C.

*I agree with Mr MacRae that as far as I can see the principal responsibilities in respect of fishery harbours remain with the Council in a corporate sense.*

*That must be so, not least in view of the 1847, 1964 and 1974 Acts which are of particular moment in this regard and in my view in the absence of any scheme of internal delegation or devolution of responsibility, the responsibilities under the Code are likely to fall on the Council as a corporate entity and as the relevant Harbour Authority or Board.*

*As a matter of legal liability it would in general be the Council that would bear any legal liability which could arise from breach of any duty and insofar as the Code assisted as a matter of evidence in establishing such a breach. I leave to one side the remoter issues of misfeasance or bad faith on the part of an individual Councillor, Committee or Director. Such is unlikely and in any event are likely to still attract liability on a vicarious basis even if the wrongdoer **held an office under the Council as opposed to just being an employee.***

*Indeed the Code recognises this very issue (my emphasis)-*

*“The Duty holder*

*1.6 Organisations must have a “duty holder” who is accountable for their compliance with the Code and their performance in ensuring safe marine operations. For most organisations, the role of duty holder is undertaken by members of the management team or a board who are (both collectively and individually) publicly accountable for marine safety under the Code.*

- 4.4 Somewhat against the trend of other Local Authorities, Counsels opinion goes on to suggest that Committees are not well placed to discharge the duties of the Duty Holder, stating:

*It seems to me that a better model is to have a Director of Service as the Duty Holder reporting as needed to the Council or Committee of the council as Harbour Authority. Duties under the Code are not however further assignable or delegable-see 1.9.*

*Accordingly it would be open although perhaps not wholly practical to have the corporate Harbour Authority as Council or Committee thereof to be Duty Holder.*

*It could be done but as the role involves ongoing and direct compliance with the Code, doing this via the Council as corporate entity or by use of a Committee of the Council, is likely to dilute the effectiveness of day to day compliance with the Code. Both the Code and the Guide stress the need for a suitably trained Duty Holder with ongoing, and not just intermittent supervision of a Harbour.*

*1.9 Harbour authorities have powers to appoint a harbour master and may properly entrust the operation of the harbour to such professional people; but the duty holder cannot assign or delegate its accountability for compliance with the Code.*

- 4.5 In all circumstances the organisation should publish and confirm who the Duty Holder is.
- 4.6 In light of Counsel's opinion Members are asked to recommend the appointment of the Director of Community Services as Duty Holder.

## **5. Implications**

- 5.1 There are no known resource implications arising from this report.
- 5.2 The "Duty Holder" is responsible for ensuring safe marine operations within Harbour Areas and approaches. Failure to discharge the duties responsibly may result in corporate prosecution and liability for any incident involving navigational safety.
- 5.3 There are no are no known equality implications arising from this report.
- 5.4 There are no are no known climate change/carbon clever implications arising from this report.
- 5.5 There are no are no known risk implications arising from this report.
- 5.6 There are no known rural implications arising from this report.
- 5.7 There are no known Gaelic implications arising from this report.

## **6. RECOMMENDATIONS**

6.1 The Committee is asked to appoint the Director of Community Services as Duty Holder.

Designation: Director of Community Services

Date: 29 November 2016

Author: Tony Usher; Harbours Manager

Background Papers Excerpt from PMSC, November 2016  
Counsels Opinion, November 2016  
Advice from Head of Legal Services, 2001



## The Duty holder

- 1.6 Organisations must have a “duty holder” who is accountable for their compliance with the Code and their performance in ensuring safe marine operations. For most organisations, the role of duty holder is undertaken by members of the management team or a board who are (both collectively and individually) publicly accountable for marine safety under the Code.
- 1.7 If however, the management team or board is not directly accountable for marine safety, or has limited decision-making powers in this respect, it is acceptable for the role of duty holder to reside elsewhere. This might be the position in some municipal ports for example, where accountability for marine safety is overseen by a local authority committee. If so, the organisation should publish and confirm who the duty holder is.
- 1.8 The duty holder is responsible for ensuring that the organisation complies with the Code. In order to effectively undertake this role they should:
- be aware of the organisation’s powers and duties related to marine safety;
  - ensure that a suitable MSMS, which employs formal safety assessment techniques, is in place;
  - appoint a suitable designated person to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety;
  - appoint competent people to manage marine safety;
  - ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set; and
  - report compliance with the Code to the MCA every 3 years.
- 1.9 Harbour authorities have powers to appoint a harbour master and may properly entrust the operation of the harbour to such professional people; but the duty holder cannot assign or delegate its accountability for compliance with the Code.
- 1.10 All duty holders should take time to gain an appropriate insight and understanding of their organisation’s port marine activities, MSMS and supporting policies and procedures. This can be accommodated through briefings and operational visits. Serious consideration should be given to appointing a member to the board who has relevant maritime experience and who can act as the initial point of contact for the designated person. The duty holder should also ensure that appropriate resources are made available for discharging their marine safety obligations.

**OPINION BY COUNSEL**

**For**

**Highland Council**

**Regarding**

**Kyle of Lochalsh Harbour**

**&**

**Port Marine Safety Code**

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**OPINION**

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I refer to the meeting in June of this year and to further papers provided by email from Stewart Fraser.

I am aware that an issue has arisen in relation to the question of “Duty Holder” in respect of the Port Marine Safety Code.

In particular I am asked to consider the following points.

- 1. In relation to the Port Marine Safety Code what are the responsibilities and or liabilities do the members of the Harbour Board have as duty holder.*
- 2. If not the Board how should the role of duty holder be fulfilled by the Highland Council and can this be done corporately?*

In relation to this I have had regard to the most recent version of the Code (1 November 2016) and also the related Guide. The Guide dates

from March 2015. A new Guide is awaited in line with the November 2016 Code. However it is fair to say that the March 2015 Guide is probably a reliable indicator of what new Guide might say. I enclose copies of the Code and Guide for convenience.

In addition I have had sight of the legal advice tendered by Malcolm MacRae when the question was first raised in 2001.

**On the first issue I would advise-**

At the outset I should say that the Code does not have a legal status. It does not create legal obligations as such or criminal law liability. Breach of the Code does not generate corporate or individual liability at common law or under statute.

The Code says at para. 18:-

*“The Government, other regulatory authorities and the industry associations have a very strong expectation that all statutory harbour authorities will comply with the Code and other organisations are encouraged to do so. Authorities should note that:*

*The Code does not contain any new legal obligations but includes (amongst other things) references to the main legal duties which already exist.*

*Failure to comply is not an offence in itself. However, the Code represents good practice as recognised by a wide range of industry stakeholders and a failure to adhere to good practice may be indicative of a harbour authority being in breach of certain legal duties. Moreover, the organisation may suffer reputational damage if it has publicly committed to the Code’s standards and then fails to meet them.*

*Periodically and/or following a major incident or accident, the regulatory authorities will seek assurance that organisations are complying with the Code. The Government will monitor levels of compliance to assess its effectiveness in delivering improved safety performance.*



*A link may be drawn between a failure to implement the principles of the Code and prosecution under Health and Safety legislation.”*

That being said it does seem to me that failure to comply with the Code could provide, in part, an evidential basis in any civil or criminal law action arising from a breach of, for example the Harbours, Docks and Piers Clauses Act 1847 or the Health and Safety at Work Act 1974 or Harbours Act 1964. There is of course a multiplicity of harbour legislation beyond these statutes.

The purpose of the Code is to provide a degree of consolidation of the principle duties and responsibilities of those who manage and operate harbours. As many duties that might arise can be of the strict liability type failure to follow the Code could well assist in showing a breach of statutory duty.

Also although decided under reference to the Pilotage Code under reference to the Pilotage Act 1987, a failure to follow a marine Code could also found an element in a claim for judicial review in public law-see *Cooper v Forth Ports plc* [2011] CSIH 36, 2011 SC 760 and compare *MacInnes v Forth Ports Limited* [2014] CSOH 92.

Although not aimed mainly or primarily at municipal harbour authorities such as Highland Council, nevertheless in my view the Code would still be relevant to providing evidence in the determination of liability. The Code is aimed at local authority harbours as well as other types of harbour. See paragraph 2 of the Code. In some ways it is not dissimilar to the Highway Code in road traffic matters. That Code can be used as evidence in road traffic cases, particularly collisions.

As noted a failure to follow an aspect of the Code could create an evidential basis for a claim of breach of legal duties imposed on the Council.

That being said any compliance must of course be proportionate (no need for the “copper bottomed” approach in a small and quiet harbour as compared with a major facility) and it suggests a risk

assessment be carried out to see how far compliance can be achieved –see para.3.

The Code itself reports, of note, that:-

*“Exposure from failing to comply with the Code*

*19. A successful prosecution has been brought against a harbour authority for breach of section 3 of the Health and Safety at Work Act 1974, in that non-compliance with the fundamental elements of the Code evidenced a failure to provide a safe system of work.”*

As regards the detail of the Code on the duties of the Duty Holder it usefully says-

### **1. Accountability for marine safety:**

*This part identifies who is accountable for the management of marine safety. It is based on these general principles:*

*The duty holder is accountable for safe and efficient operations. The duty holder should make a clear published commitment to comply with the standards laid down in this Code.*

*Executive and operational responsibilities for marine safety must be clearly assigned and those entrusted with these responsibilities must be appropriately trained, qualified and experienced and answerable for their performance.*

*A ‘designated person’ must be appointed to provide independent assurance about the operation of its MSMS (**Note from me-this means Marine Safety Management System**). The designated person must have direct access to the duty holder.*

### **2. Key measures to secure marine safety**

*This part describes actions that the duty holder should ensure are in place to the extent appropriate for their operations:*

*Review existing powers: Harbour authorities and, where appropriate, other organisations, should periodically review their existing powers to ensure that they remain fit for purpose. This may include the need to seek additional powers if a risk assessment determines that these are required. Harbour authorities should check their local Acts and Orders if there is doubt as to whether they have all of the common duties and powers described in this Code.*

*Use formal risk assessment: Powers, policies, plans and procedures should be based on a formal assessment of hazards and risks and organisations should have a formal MSMS.*

*Implement a marine safety management system: An MSMS should be in place to ensure that all risks are identified and controlled – the more severe ones must either be eliminated or reduced to the lowest possible level, so far as is reasonably practicable (that is, such risks must be kept as low as reasonably practicable or “ALARP”). Organisations should consult, as appropriate, those likely to be involved in, or affected by, the MSMS they adopt. The opportunity should be taken to develop a consensus about safe navigation. The MSMS should refer to the use of formal risk assessment which should be reviewed periodically as well as part of post incident/accident investigation activity.*

*Competence standards: Those entrusted with Code-related responsibilities must be appropriately trained, experienced and qualified to undertake their duties.*

*Incident reporting and investigation: It is essential that the MSMS addresses the potential for incidents to occur and provides instruction and guidance on any investigations and enforcement action including any statutory reporting requirements that may be required.*

*Monitoring performance and auditing: The MSMS must incorporate a regular and systematic review of its performance.*

*Enforcement: Byelaws, directions, policies and procedures, adopted in order to manage identified marine risks must be backed by an appropriate policy on enforcement.*

*Publication of Plans and reports: A safety plan for marine operations should be published at least once every three years.*

*Consensus: The organisation should strive to maintain a consensus about safe navigation. This can be achieved through formal programmes of stakeholder engagement a review of relevant risk assessments with users of the facility or harbour.*

*Monitoring Compliance: The duty holder must contribute to a three yearly compliance exercise by declaring to MCA their compliance with the Code.*

### **3. General duties and powers:**

*For the purposes of the Code, the duty holder should ensure that the harbour authority or organisation discharges its responsibilities for: Safe and efficient port marine operations: Having regard to the efficiency, economy and safety of operation of the services and facilities provided as well as ensuring that appropriate resources are made available for discharging their marine safety obligations.*

*Open Port Duty: Taking reasonable care, so long as the harbour or facility is open for public use, that all who may choose to navigate in it may do so without danger to their lives or property.*

*Conservancy duty: Conserving the harbour or facility so that it is fit for use; this duty also includes providing users with adequate information about conditions in the harbour or facility.*

*Revising duties and powers: The harbour authority should keep its powers and jurisdiction under review and take account of the various mechanisms, such as harbour orders, which are available to amend statutory powers in an authority's local legislation.*

*Environmental duty: Exercise its applicable functions with regard to nature conservation and other environmental considerations.*

*Civil Contingencies duty: Take account of the organisation's responsibilities under the Civil Contingencies Act 2004 including planning, preparing and co-ordinating responses to emergencies which*

*threaten serious damage to human welfare, the environment or security.*

*Harbour authority powers: Harbour authorities must be aware of their statutory powers and responsibilities under both primary and secondary legislation.*

#### **4. Specific duties and powers:**

*The duty holder should also be aware of other specific duties and powers which are relevant to port marine safety and may be relevant to the organisation, including the following:*

*Powers of Direction: Powers to direct vessels are available and should be used where appropriate to support safe navigation.*

*Regulation of dangerous vessels and substances: Dangerous vessels and dangerous substances (including pollution) must be effectively managed.*

*Pilotage: A pilotage service must be provided if required in the interests of safety as determined by risk assessment.*

*Local lighthouse authorities: All statutory harbour authorities and some other organisations have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks, obstructions or changes in the navigable waterway managed effectively."*

#### **On the second issue I would advise-**

I agree with Mr MacRae that as far as I can see the principal responsibilities in respect of fishery harbours remain with the Council in a corporate sense.

That must be so, not least in view of the 1847, 1964 and 1974 Acts which are of particular moment in this regard and in my view in the absence of any scheme of internal delegation or devolution of responsibility, the responsibilities under the Code are likely to fall on the Council as a corporate entity and as the relevant Harbour Authority or Board.

I agree, however, with Mr MacRae that in the context of a local authority the concept of individual responsibility on the part of councillors or committee, does not fit well with the framework of local government law in Scotland and that in general duties and responsibilities are imposed on the Council but are exercised in practice by Committees which have the power delegated to them in terms of Section 56 of the Local Government (Scotland) Act 1973 or to Directors of Service.

As a matter of legal liability it would in general be the Council that would bear any legal liability which could arise from breach of any duty and insofar as the Code assisted as a matter of evidence in establishing such a breach. I leave to one side the remoter issues of misfeasance or bad faith on the part of an individual Councillor, Committee or Director. Such is unlikely and in any event are likely to still attract liability on a vicarious basis even if the wrongdoer **held an office under the Council as opposed to just being an employee.**

Indeed the Code recognises this very issue (my emphasis)-

*“The Duty holder*

*1.6 Organisations must have a “duty holder” who is accountable for their compliance with the Code and their performance in ensuring safe marine operations. For most organisations, the role of duty holder is undertaken by members of the management team or a board who are (both collectively and individually) publicly accountable for marine safety under the Code.*

*1.7 If however, the management team or board is not directly accountable for marine safety, or has limited decision-making powers in this respect, it is acceptable for the role of duty holder to*

*reside elsewhere. This might be the position in some municipal ports for example, where accountability for marine safety is overseen by a local authority committee. If so, the organisation should publish and confirm who the duty holder is.*

*1.8 The duty holder is responsible for ensuring that the organisation complies with the Code. In order to effectively undertake this role they should:*

*be aware of the organization and powers which are relevant to port marine safety and may be relevant to the organisation, including the following:*

*be aware of the organisation's powers and duties related to marine safety;*

*ensure that a suitable MSMS, which employs formal safety assessment techniques, is in place;*

*appoint a suitable designated person to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety;*  
*appoint competent people to manage marine safety;*

*ensure that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set; and report compliance with the Code to the MCA every 3 years.*

*1.9 Harbour authorities have powers to appoint a harbour master and may properly entrust the operation of the harbour to such professional people; **but the duty holder cannot assign or delegate its accountability for compliance with the Code.***

*1.10 All duty holders should take time to gain an appropriate insight and understanding of their organisation's port marine activities, MSMS and supporting policies and procedures. This can be accommodated through briefings and operational visits. Serious consideration should be given to appointing a member to the board who has relevant maritime experience and who can act as the initial point of contact for the designated person. The duty holder should also ensure that appropriate resources are made available for discharging their marine safety obligations."*

The Guide has this to say (my emphasis)-

*“2.2.19. The harbour authority must have a ‘Duty Holder’ who is accountable for its compliance with the Code and its performance as regards the safety of marine operations in the harbour and its approaches. For most harbour authorities, the role of duty holder is undertaken by members of the harbour board who are (both collectively and individually) accountable for marine safety under the Code. This is the default position. If however, it is not appropriate for harbour board to assume this role – which might be, for example, the position for some municipal ports - the harbour authority must confirm and publish who the duty holder is.*

*2.2.20. Paragraph 2.6. of the Code says, although harbour authorities have powers to appoint a harbour master, and to authorise pilots, and may properly entrust the operation of the harbour to such professional people, they cannot assign their accountability. The Duty Holder may not abdicate responsibility on the grounds that they do not have particular skills. They retain strategic oversight and direction of all aspects of the harbour operation and they must ensure that their powers are discharged but not exceeded.*

*2.2.21. It is important that executive and operational responsibilities should be assigned appropriately by every authority - and to properly trained people. All the authority’s employees should have training appropriate to the responsibilities for marine operations assigned to them relating to the safety of marine operations. In some small authorities, functions may be combined. It is also important in all cases that there is a proper separation of safety and commercial functions. This is important for authorities of all sizes.*

*2.2.22. It is recommended that all board members should take time to gain an appropriate insight and understanding of the port’s marine activities, marine safety management system and supporting systems. This can be accommodated through briefings and operational visits.*



*2.2.23. Serious consideration should be given to appointing a member to the board who has relevant maritime experience, who can act as the initial point of contact for the designated person. An authority's principal officers holding delegated responsibilities for safety would normally be expected to attend board meetings."*

It does seem to me with reference to the question that I have been asked that it is difficult to see the present time in the absence of any published decision having taken to the contrary, to avoid the conclusion that the Council, as Harbour Authority, could be viewed by way of default as the Duty Holder.

It does however seem to me that given the peculiarity of the public authority port situation that the approach in the Code that is advocated, namely that the Harbour Authority should confirm or publish of who the duty holder is, if not the Authority, ought to be followed. I refer to 1.7.

This would make it absolutely clear that insofar as Code duties are applied they do not apply to the Harbour Authority and questions of individual responsibility in terms of the Code can therefore be addressed to the Duty Holder (be they an individual, entity or Committee).

That of course does not mean to say that the Harbour Authority as such would still not be responsible for the duties imposed upon it by the general legislative framework I have mentioned or the common law.

It would however mean that insofar as the Code could be relied upon as a basis for attempting to show liability on the part of the Harbour Authority, the reallocation for responsibility under the Code to the relevant Duty Holder could be helpful in assisting in the defence of a claim by showing that a sensible system of ongoing oversight was put in place as opposed, for example, to occasional meetings of a Harbour Board or Committee.

I am aware from my practice in other local authorities that sometimes the duty holder is the Harbour Master or an Assistant Harbour Master because as a matter of law the Harbour Master is the holder of an office as opposed to being an employee of the authority although in practice in reality they are in effect employed by the authority.

I say this because no one can direct the Harbour Master in the exercise of their functions. However there may be conflicts in having the HM or an assistant as Duty Holder as the duties held go beyond those which are for the HM or an assistant eg conservancy.

It seems to me that a better model is to have a Director of Service as the Duty Holder reporting as needed to the Council or Committee of the council as Harbour Authority. Duties under the Code are not however further assignable or delegable-see 1.9.

The Code also says -

*“Duty holder: Formally identify and designate the duty holder, whose members are individually and collectively accountable for compliance with the Code, and their performance in ensuring safe marine operations in the harbour and its approaches.*

*Designated Person: A ‘designated person’ must be appointed to provide independent assurance about the operation of the marine safety management system. The designated person must have direct access to the duty holder.”*

Accordingly it would be open although perhaps not wholly practical to have the corporate Harbour Authority as Council or Committee thereof to be Duty Holder.

It could be done but as the role involves ongoing and direct compliance with the Code, doing this via the Council as corporate entity or by use of a Committee of the Council, is likely to dilute the effectiveness of day to day compliance with the Code. Both the Code and the Guide stress the need for a suitably trained Duty Holder with ongoing, and not just intermittent supervision of a Harbour.

Further of course there must be a Duty Holder for each Harbour. That could be the same entity or individual or different. Much might depend on geographic and practical considerations.

It could be member of the Authority or an Officer of the Council or Director. These last two seem more practicable options. Whoever it is that must be clearly identified and published. It is primarily a matter for the Harbour Authority to do this as a matter of practice.

If a more corporate solution is desired, a possible solution is having a corporate Duty-Holder but as per 2.2.23 of the Guide appointing a first point of contact within it who has relevant experience. Such an arrangement might allow for in effect ongoing oversight, accountability with the Designated Person and a more “hands on” oversight than simply having a corporate Duty- Holder. The only caveat I would highlight is that it is not possible to delegate in terms of ultimate responsibility as regards the duties, to such a day to day contact. Because of that it does mean that internal channels of accountability vis-à-vis the corporate entity and the experienced first point of contact.

As an aside from experience I am aware that a designated person may be someone with extensive marine experience from operators like Cal Mac. This occurs, I believe, at Rothesay Harbour.

I hope this is useful and I am happy to discuss further.

**THE OPINION OF**

**SCOTT BLAIR  
ADVOCATE  
TERRA FIRMA CHAMBERS  
10 NOVEMBER 2016**

**SB/WB**

**MEMORANDUM**  
**CORPORATE SERVICES**

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**To: PAUL JENKINS, HARBOURS PROJECT MANAGER**

**From: HEAD OF LEGAL SERVICES**

**Date: 17 DECEMBER 2001**

**Our ref: L/RT-2:MMR/JC**

**Your ref:**

**Please ask for: MALCOLM McRAE – EXT 2104**

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**FISHERY HARBOURS MANAGEMENT BOARD**  
**PORT MARINE SAFETY CODE**

Concerning your memo of 6 December and the Report that went to the Board on 4 December, I am of the view that the Members of the Board do not bear responsibility for complying with the Port Marine Safety Code.

The decision of the Roads and Transport Committee on 8 October 1997, to establish a Fishery Harbour Management Group, refers only to a monitoring and advisory role in respect of the commercial operation of the Council's commercial fishery harbours. The Group (now the Board) are not a Committee or a Sub-committee, and therefore cannot exercise delegated powers. The principal responsibilities in respect of fishery harbours remain with the Council corporately, and it is the Council which should be regarded as complying with the Safety Code.

The Code itself does not specifically address the position of local authorities which are also harbour authorities, and the references to individual responsibility of members are questionable, in my view, and not applicable in a local authority context. The position is similar to that in respect of the Health and Safety at Work Act, where the Council is ultimately responsible, but responsibilities are imposed on Service Directors to have in place adequate Health and Safety policies, individual responsibilities being further devolved upon Managers and Heads of establishments. The Roads and Transport Service, generally, are well acquainted with the hierarchy of responsibilities that exists in respect of health and safety at work, and I suggest that the requirements of the Port Marine Safety Code should be viewed in the same manner, and similar responsibilities identified and allocated.

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c.c. Alistair Dodds, Director of Corporate Services  
Ros Pieroni, Head of Committee Services  
Ailsa Mackay, Insurance Manager  
Director of Roads and Transport