



devon**audit**partnership

Internal Audit

Internal Audit Report

Port Marine Safety Code 2021-22

Tor Bay Harbour Authority

November 2021

Official



Support, Assurance & Innovation

Devon Audit Partnership

Devon Audit Partnership has been formed under a joint committee arrangement comprising of Plymouth, Torbay, Devon, Mid-Devon, South Hams & West Devon, Torridge and North Devon councils and we aim to be recognised as a high quality public sector service provider.

We work with our partners by providing professional internal audit and assurance services that will assist them in meeting their challenges, managing their risks and achieving their goals. In carrying out our work we are required to comply with the Public Sector Internal Audit Standards (PSIAS) along with other best practice and professional standards.

The Partnership is committed to providing high quality, professional customer services to all; if you have any comments or suggestions on our service, processes or standards, the Head of Partnership would be pleased to receive them at robert.hutchins@devon.gov.uk.

Confidentiality and Disclosure Clause

This report is protectively marked in accordance with the National Protective Marking Scheme. Its contents are confidential and, whilst it is accepted that issues raised may well need to be discussed with other officers within the organisation, the report itself should only be copied/circulated/disclosed to anyone outside of the organisation in line with the organisation's disclosure policies.

This report is prepared for the organisation's use. We can take no responsibility to any third party for any reliance they might place upon it.

1 Introduction

The 'Port Marine Safety Code (PMSC)' establishes a national standard for every aspect of port marine safety and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. The code applies to all harbour authorities in the UK that have statutory powers and duties.

The Devon Audit Partnership is the appointed 'Designated Person' for Tor Bay Harbour Authority for 2021/22.

2 Audit Opinion

Based upon progress made against previous recommendations and agreed actions, and the findings of this year's Audit against the current code requirements, in our opinion **Tor Bay Harbour Authority is compliant with the requirements of the Port Marine Safety Code.**

3 Executive Summary

We have undertaken a follow up of the previous findings and recommendations made in relation to 2020/21 and undertaken a current assessment of Tor Bay Harbour Authority against the requirements of the Port Marine Safety Code. We have examined a restricted sample of records relating to both previous recommendations made and current practices in relation to the Tor Bay Harbour Authority and its compliance with the requirements of the Code and obtained such explanations and carried out such tests as we consider necessary to confirm Management have actioned previous recommendations and remain compliant with the Code.

To the best of our knowledge and belief, having carried out appropriate checks within the remit of both the follow up and annual compliance exercise and considered responses provided to us by relevant Harbour staff, in our opinion Tor Bay Harbour Authority remains compliant with the Port Marine Safety Code. We continue to have concerns in relation to land-based Health and Safety (H&S), however these are outside of the scope of the Code and we understand are now being addressed following the appointment of a designated H&S Officer within the harbour team.

We have noted areas where action is required (refer to Appendix A).

The detailed findings and recommendations regarding these issues and less important matters are described in the Appendices. Recommendations have been categorised to aid prioritisation. Definitions of the priority categories and the assurance opinion ratings are also given in the Appendices to this report.

4 Added Value

Compliance against the requirements of the Port Marine Safety Code.

5 Assurance Opinion on Specific Sections

The following table summarises our assurance opinions on each of the areas covered during the audit. These combine to provide the overall assurance opinion at Section 2. Definitions of the standard assurance opinion ratings can be found in the Appendices; however, these are not applicable for this compliance audit.

Risks / Areas Covered		Level of Assurance
1	Breach of Port Marine Safety Code	Compliant with the requirements of the Port Marine Safety Code

The findings and recommendations in relation to each of these areas are discussed in the "Detailed Audit Observations and Action Plan" appendix. This appendix records the action plan agreed by management to enhance the internal control framework and mitigate identified risks where agreed.

6 Issues for the Annual Governance Statement

The evidence obtained in internal audit reviews can identify issues in respect of risk management, systems and controls that may be relevant to the Annual Governance Statement. Following our review, we would suggest that the ongoing Health and Safety issues, although not relevant to Port Marine Safety Code compliance, may warrant continued inclusion, however, recognise the appointment of a dedicated Harbour H&S Officer within the harbour team.

7 Scope and Objectives

Devon Audit Partnership as the 'Designated Person' undertook a review and assessment of Tor Bay Harbour Authority against the requirements as specified in the Department for Transport's Port Marine Safety Code, and the associated Port Marine Safety Code Guide to Good Practice. This did not include a physical walk round and inspection of the three Tor Bay Harbour sites for a number of reasons including key staff absence; no Harbour Master availability; and potential Covid risks.

8 Inherent Limitations

The opinions and recommendations contained within this report are based on our examination of restricted samples of transactions / records and our discussions with officers responsible for the processes reviewed.

9 Acknowledgements

We would like to express our thanks and appreciation to all those who provided support and assistance during the course of this audit.

Robert Hutchins
Head of Partnership

Appendix A

Detailed Audit Observations and Action Plan

1. Risk Area Covered: Breach of Port Marine Safety Code	Level of Assurance
<p>Opinion Statement: We note that there have been staffing issues this year with the loss of the Harbour Master, sickness and staff leaving. We understand that to compensate new rotas to ensure staffing is covered at all the harbours have been introduced. In our opinion, based upon the information and evidence provided we can confirm that Tor Bay Harbour Authority (TBHA) are in compliance with the majority of the requirements of the Port Marine Safety Code (PMSC) as outlined.</p> <ul style="list-style-type: none"> – The Harbour Authority are aware of their existing powers and duties via their terms of reference and safety plan. – Devon Audit Partnership remain the appointed 'independent designated person' with direct access to the Board (Harbour Committee). A PMSC Health Check was undertaken in September 2019 by the Maritime & Coast Guard Agency. In their findings / recommendations, it was noted that in relation to the Designated Person although the Devon Audit Partnership is an expert auditor, they do not have a marine background as suggested by the Guide to Good Practice, and their recommendation was that 'A Harbour Master / Deputy from another Port, perhaps under reciprocal arrangements, could provide responsibility as the Designated Person or provide the appropriate support to the existing Designated Person'. The action was that 'This arrangement will be progressed by the new Harbour Master once in post'. – An effective marine safety management system, which employs formal risk assessment techniques is in place through the MarNIS and SheAssure systems. – The people employed are competent and qualified for the positions they hold, as detailed within job descriptions and associated training records. – The Harbour Authority publish a comprehensive safety plan, along with regular assessment showing the authority's performance measured against the Code via Harbour Committee reports and minutes which are available online. <p>Where actions are required to further improve compliance, we have made associated recommendations as detailed. Key risks and issues identified relate to the following:</p> <ul style="list-style-type: none"> – Arrangement for support of the Designated Person in relation to marine knowledge. – The increase in marine use following more UK based holidays, as a result of the Covid-19 pandemic and the associated risks, for example we understand that there have been a number of near misses reported on MarNIS related to open water swimming. – Increased vessel traffic and associated risks. We understand progress has been made in relation to the AIS system but the status of this requires clarification. – The need for an operational Safety Committee. 	<p>Compliant with the requirements of the Port Marine Safety Code</p>

Agreement of new pilotage and towage arrangements to replace the previous provision by MTS, to be supported by a Harbour Pilotage Review Working Party.

We understand that based on an assessment of the risk, TBHA does not provide a formal Vessel Traffic Service within the Harbour, instead choosing to provide a Local Port Service and provides information on request.

Although outside of the remit of the PMSC, we have previously reviewed land-based Health and Safety aspects, which had noted several serious issues. We are pleased to note that TBHA have now appointed a dedicated Health and Safety Officer to progress and resolve the issues identified. An example of which is the H&S risks and issues associated with the increase of traffic both pedestrian and vehicle at Brixham harbour, which we understand is being monitored and risk assessments undertaken.

No.	Observation and implications		
1.1	We understand that the actual number of vessel movements across the Bay is not precisely known or recorded. The previous Harbour Master agreed to introduce an AIS system, however the status of this is not known although we understand it had progressed. As vessel traffic is likely to have increased this year in line with a greater volume of UK based holidays and associated volume of visitors to the area and water-based activities, it may be prudent for TBHA to maintain a record of the exact numbers of vessel traffic movement. We understand that several near misses have been reported on MarNIS.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.1.1	Maintain a record of Tor Bay vessel traffic movement.	Medium	It is not practicable to record all vessel movements, both large and small, with the Tor Bay Harbour area. An AIS system will help to track and record the movement of larger vessels and smaller commercial traffic.
No.	Observation and implications		
1.2	<p>A PMSC Health Check was undertaken in September 2019 by the Maritime & Coast Guard Agency. The previous Harbour Master produced an action plan to address issues identified, however given that he recently left Harbour employment we were unable to obtain a current status of all the actions. In the findings / recommendation it was noted that in relation to the Designated Person (DP) 'although Devon Audit Partnership is an expert auditor, they do not have a marine background as suggested by the Guide to Good Practice', with their recommendation being 'A Harbour Master / Deputy from another Port, perhaps under reciprocal arrangements, could provide responsibility as the DP or provide the appropriate support to the existing DP'.</p> <p>The then Harbour Master drew up an action plan in response to the Health Check where it was stated that the Dartmouth Harbour Master would be contacted to provide support to the DP. This remains outstanding as for 2020/21 due to Covid a full audit was not completed, only a follow up of the previous audit. For the current year Dartmouth do not have a Harbour Master at present and therefore cannot provide the arrangement. We understand that the final report for 2021/22 will provided to the new Harbour Master who takes over in December 2021.</p>		

	Recommendation	Priority	Management response and action plan including responsible officer
1.2.1	The Harbour Committee / Senior Management should discuss as to how going forward they wish to address the issue around the appointment of the DP i.e., DAP will continue to provide the service with the aid of a Harbour Master / Deputy Harbour Master from another Port or to enter a reciprocal arrangement with another Port.	High	This matter will be a priority for the incoming Tor Bay Harbour Master – a recommendation will be made to the Harbour Committee in March 2022.
1.2.2	Review and progress the MCA Health Check actions and provide a current status to Internal Audit (DAP as the DP) – See Appendix B	Medium	The incoming Tor Bay Harbour Master will provide an update to DAP by February 2022.
No.	Observation and implications		
1.3	Primarily, all duty holder requirements are in place. However, we note that a recommendation arising from the 2019 MCA PMSC health check identified a need for a Safety Committee. This requirement has been an agreed action which has been included on the associated improvement plan and was due to be proposed at the September Harbour Committee, however we are yet to be provided with a status.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.3.1	Formulation of a Safety Committee to be progressed and implemented as agreed within the MCA health check action plan to comply with the requirements of the PMSC.	Medium	The incoming Tor Bay Harbour Master will provide an update to DAP by February 2022.
No.	Observation and implications		
1.4	TBHA comply with a majority of the Code's requirements in terms of duties and powers. However, the Harbour terms of reference (ToR) confirms that they will review annually the powers delegated to the Executive Head of Business services. Our review of committee meeting records could not identify this as having been completed for 2021. This may be in part due to the current pandemic and/or the period between the previous Harbour Master leaving and the new appointment due to take up post in December 2021.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.4.1	As defined within the ToR the delegated powers require annual review.	Low	Agreed. This requirement will be reintroduced to the annual cycle of Harbour Committee business and it will be reclassified as an ' <i>annual review of the powers delegated to the Head of Tor Bay Harbour Authority and Tor Bay Harbour Master</i> '.
No.	Observation and implications		
1.5	Regarding employee consultation, we understand that there are regular 'tool box talks' with teams. The CITB toolbox talks publication is used which we understand contains 86 subject areas ranging from health and safety policies to manual handling techniques and an end of module question set to ensure understanding. Currently these talks are not formally recorded.		

	Recommendation	Priority	Management response and action plan including responsible officer
1.5.1	In order to provide a clear record of toolbox talk subjects delivered to staff we would recommend that these be formally recorded, noting the staff names, dates of training and modules covered.	Opportunity	This is agreed and records of the training should be added to the training matrix for each individual employee.
No.	Observation and implications		
1.6	Risk assessments related to Marine Operations / safety are held in MarNIS and everything else H&S related is held in She Assure. Whilst the majority of risk assessments were up to date, we identified a small number where the review is now overdue. We understand that the MarNIS based risks are usually the responsibility of the Harbour Master, however the Health and Safety Officer has advised that he is attempting to ensure that these are reviewed. The delay in review may be in part due to a combination of the impact of the Covid-19 pandemic and the period between the previous Harbour Master leaving and the new Harbour Master commencing employment albeit there has been interim cover.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.6.1	All overdue Risk Assessments should be reviewed and updated where necessary.	Low	Agreed. It is expected that these will be concluded by the end of March 2022.
No.	Observation and implications		
1.7	The Marine Safety Management Plan has recently been updated by the H&S Officer but will need a full review from the new Harbour Master once in post. The 3 yearly PMSC compliance letter has been provided and requires publication. The Tor Bay Harbour Emergency Plan is available on the Harbour website, this needs review as the last review is dated 2015 and refers to MTS who are no longer supplying the pilotage service.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.7.1	The Harbour Master should review the Marine Safety Plan and if necessary, make any amendments; the review should be recorded with the plan	Low	Agreed – to be completed by March 2022.
1.7.2	The Emergency Plan should be reviewed and updated where appropriate, once completed this should then be published on the website and the old one removed	Medium	Agreed – to be completed by March 2022.
1.7.3	The latest compliance letter requires publication on the Tor Bay Harbour website.	Low	Agreed – to be completed by December 2021.
No.	Observation and implications		
1.8	It was previously stated and agreed that the Harbour Masters Powers be reviewed annually, however the Safety Plan states every 5 years		

	Recommendation	Priority	Management response and action plan including responsible officer
1.8.1	Once in place the new Harbour Master should determine the frequency of the review of his Powers, this should then be formally approved by the Harbour Committee.	Low	See 1.4.1 above.
No.	Observation and implications		
1.9	<p>Some of the supporting governance aspects are in place in terms of Pilotage, such as pilotage directions, authorisation of pilots and training certification, and the templates for pilotage passage plan. However, some aspects are not immediately apparent and therefore require clarification from the Harbour Master, for example, service provision risk assessments, pilotage reviews, publication of passage plans, procedures for suspension and revocation of a pilot's authority.</p> <p>We can see from the Council's Committee details that a Harbour Pilotage Review Working Party has been formed, however there are no minutes available to review and there is only one individual named within the party membership.</p> <p>Pilotage was previously provided by MTS, however they have not renewed their contract and ceased service provision at the end of October 2021. The current acting Harbour Master advised that Teignmouth have licensed pilots and there is a local pilot boat, and consideration is being given to forming a pilotage arrangement with Teignmouth Harbour Commissioners.</p>		
	Recommendation	Priority	Management response and action plan including responsible officer
1.9.1	Management should confirm if this working party has been set up, how often they meet, and any outcomes / decisions made by them. Once set up, the working party should also ensure that all of the pilotage requirements of the code are met.	Medium	Agreed. This requirement will be reintroduced to the annual cycle of Harbour Committee business and the Pilotage Review Working Party set up.
No.	Observation and implications		
1.10	The Towage guidelines are available on the Tor Bay Harbour website; however, these are now out of date as they refer to MTS who no longer provide this service. As previously noted, arrangements are currently under review.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.10.1	The Towage Guidelines will need to be updated following the decision and agreement to the service provision.	Low	The incoming Tor Bay Harbour Master will undertake a review of the Towage Guidelines and provide an update to the Harbour Committee and DAP in March 2022.
No.	Observation and implications		
1.11	We understand that Tor Bay Harbour Authority does not have the power for general directions, however the SOP does refer to the process regarding the Harbour Master's ability to issue general directions in an emergency only. Therefore, clarification is sought in relation to what powers of direction the Harbour Authority has. We also understand that the process already defined for issuing Harbour Directions would be used in relation to the issuing of Special Directions.		

	Recommendation	Priority	Management response and action plan including responsible officer
1.11.1	Clarification is sought regarding the Harbour Authorities powers to issue special direction. Once clarified the SOP may require amendment.	Low	Agreed. This information can be obtained from previously commissioned reviews of the Harbour Authority's Powers of Direction.
No.	Observation and implications		
1.12	Training records are now held in SheAssure which details training that has been completed and any training needs that have been identified but not yet completed. We understand that there are plans to attach training certificates and training expiry dates into SheAssure, however this is yet to be fully completed. In addition, a previous recommendation remains outstanding in relation to evidencing training related to lone working. This will need to be recorded within SheAssure during the training record update noted above.		
	Recommendation	Priority	Management response and action plan including responsible officer
1.12.1	Training records (including lone working training) should be fully updated to record expiry dates, and where necessary training certificates attached to records.	Low	See 1.5.1 above. This is agreed and records of the training should be added to the training matrix for each individual employee.

Appendix B**PORT MARINE SAFETY CODE HEALTH CHECK REPORT
IMPROVEMENT PLAN AS AT 12 SEPT 19**

ITEM	IMPROVEMENT ACTION	PRIORITY	STATUS	ACTION TAKEN	OWNER
DH	Duty Holders they may benefit from a programme of briefings and operational visits. Alternatively, the Committee may consider appointing a sub- group to bring more focus to Marine Safety responsibilities.	Med	In Hand	Safety Committee to be proposed at Sept HC meeting	HM
DP	A harbour master/ deputy at another port, perhaps under reciprocal arrangements, could provide responsibility as the DP or provide the appropriate support to the existing DP.	Med	Not started	HM will contact Dart HM to request and arrange support for DP	HM
RA	During their visit the MCA team observed up to 4 passenger vessels manoeuvring, at one time, in the vicinity of the single landing pontoon. Brixham has a home fleet of beam trawlers adding a substantial number of ship vessel movements within the port. Torquay has a similar passenger schedule with an observed blind approach to the harbour. Both facilities are home to large marinas with uncontrolled leisure boat movements. This presents a significant risk which is currently not separately identified on the risk register. A risk assessment may point to a need to introduce appropriate directions to the MSMS.	High	In hand	Produce Risk Assessments for each of the enclosed harbours regarding ferry and trawler movements	AP/ SP/ NB
MSMS	It may be worthwhile considering introducing weather related operating protocols particularly in relation to the domestic passenger vessels. The assessment of visibility would be an important risk factor.	High	Not started		HM
RA	There were a number of waterborne activities by external contractors observed by the visiting MCA team associated with vessel maintenance and harbour infrastructure. These involved personnel working on exposed and unprotected platforms. There was no use of safety lines, lifejackets or	High	Partially able to comply	Permit to work system considered but there are insufficient staff in Brixham to administer such a system. Instead, propose that we direct all vessels to introduce a PtW system for crews operating aloft, hot-work,	HM

ITEM	IMPROVEMENT ACTION	PRIORITY	STATUS	ACTION TAKEN	OWNER
	other PPE in evidence posing a significant risk to those involved. Method statements should be supplied and approved for these operations or if submitted a level of oversight maintained by the Harbour until the operation is completed. The introduction of a Permit to Work system may be of use in these circumstances			operating over the side etc within their own SMS. This can be controlled by introducing a 'Permit to Refit' system in which Masters' sign to say they have such a system in place	
Powers of Dir'n	The issue of PECs may be a mitigating response to any risk identified when domestic passenger vessel movements are considered	Medium	Not started	Contact ferry operators and issue PECs subject to their meeting PEC criteria	HM
VHF	Brixham VHF is manned 24/7 by certificated security personnel which could provide the facility to exercise appropriate powers of direction as required to control navigation within the enclosed harbours.	High	50% complete	NtM issued directing ferries and commercial fishermen to hail on VHF #14 when entering/leaving Brixham/Torquay and when entering/leaving MFV basin. Mixed levels of compliance to date which is being addressed	HM
Comm vx	In addition to the domestic passenger ships there are a considerable number of commercially operated angling and sight-seeing boats based in all three harbour facilities. These include 'heritage' vessels. It is important that these vessels' operations meet MCA legislative requirements. There is no system of checks found in relation to the legality of these operations.	Med	Not started	Develop and introduce suitable system of checks	HM
Staff	None of the deputies, although experienced in their current roles, have formal qualifications. Nor is there a programme of Continuous Professional Development in evidence. The UKHMA Certificate could be viewed as an option	Low	Not started	Consider addition of HM Cert training for DHMs	HM
Acc Inv	However one seaborne accident when 2 'heritage' vessels collided has not been addressed following investigation. A fatal accident involving a pleasure craft in 2015 was investigated by MAIB. There were no direct recommendations for the Harbour Authority outside of general advice presented by the RYA.	High	Not started	Investigate and make appropriate recommendations	SP

Definitions of Audit Assurance Opinion Levels

Assurance	Definition
Substantial Assurance	A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.
Reasonable Assurance	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.
Limited Assurance	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.
No Assurance	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited.

Definition of Recommendation Priority

Priority	Definitions
High	A significant finding. A key control is absent or is being compromised; if not acted upon this could result in high exposure to risk. Failure to address could result in internal or external responsibilities and obligations not being met.
Medium	Control arrangements not operating as required resulting in a moderate exposure to risk. This could result in minor disruption of service, undetected errors or inefficiencies in service provision. Important recommendations made to improve internal control arrangements and manage identified risks.
Low	Low risk issues, minor system compliance concerns or process inefficiencies where benefit would be gained from improving arrangements. Management should review, make changes if considered necessary or formally agree to accept the risks. These issues may be dealt with outside of the formal report during the course of the audit.
Opportunity	A recommendation to drive operational improvement which may enable efficiency savings to be realised, capacity to be created, support opportunity for commercialisation / income generation or improve customer experience. These recommendations do not feed into the assurance control environment.

Confidentiality under the National Protective Marking Scheme

Marking	Definitions
Official	The majority of information that is created or processed by the public sector. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media, but are not subject to a heightened threat profile.
Official: Sensitive	A limited subset of OFFICIAL information could have more damaging consequences if it were lost, stolen or published in the media. This subset of information should still be managed within the 'OFFICIAL' classification tier, but may attract additional measures to reinforce the 'need to know'. In such cases where there is a clear and justifiable requirement to reinforce the 'need to know', assets should be conspicuously marked: 'OFFICIAL-SENSITIVE'. All documents marked OFFICIAL: SENSITIVE must be handled appropriately and with extra care, to ensure the information is not accessed by unauthorised people.