

MALDON HARBOUR IMPROVEMENT COMMISSIONERS

Historical Background and Statutory Context

The Maldon Harbour Improvement Commissioners (MHIC) are the statutory harbour authority for the Port of Maldon. The Commissioners are incorporated by Act of Parliament through The Maldon Harbour Order 1865 for *'the improvement, maintenance and regulation of the Harbour at Maldon in the County of Essex'*.

It was established in an endeavour to improve the economy and maritime trading links of the town which was, at that time, reaping the benefits of the newly built railway. A link was proposed between Braintree, Witham and a large dock was to be built at Maldon but although the port continued to serve some industry, the expanding leisure sector as well as riparian businesses, the dock and rail link was never built.

The harbour area extends *'in and over the whole of the River Blackwater'* from Fullbridge, up Heybridge Creek, and downstream to a point some 70 metres above the Chelmer and Blackwater Canal lock entrance at Heybridge Basin. Most of these waters are nowadays included within the Blackwater Estuary Management Plan area, which designates the locality as one for nature conservation. The area is also classed as a Site of Special Scientific Interest (SSSI), a Special Protection Area (SPA) and bears the International Designation as a RAMSAR site. The waters also form part of the Essex Estuaries European Marine Site management scheme.

Responsibilities

MHIC are a 'competent harbour authority' for the purposes of the Pilotage Act, although the Commissioners reserve the right not to exercise the powers in the Act (i.e. to provide Pilots). The Commissioners, as a body, are also a 'local lighthouse authority' and provide and maintain in the harbour area eleven navigation buoys (five fitted with lights) under the supervision of Trinity House.

The duties of the harbour authority are of two kinds. Firstly, there are statutory duties imposed by The Maldon Harbour Order and in general legislation, such as the Harbours Act 1964, the Dangerous Vessels Act 1985, the Pilotage Act 1987 and the Merchant Shipping Acts. Secondly, there are common-law and fiduciary duties. These duties together govern the Commissioners' oversight of marine operations in waters within their jurisdiction. There is also a general duty to exercise their functions having regard to nature conservation and the environment and to facilitate the safe use of the harbour; there is also a duty of care against loss caused by the authority's negligence.

MHIC were created by statute to serve the public interest. Maldon is a 'trust port', an independent statutory body run on a commercial basis by a board of trustees (the Commissioners). Trust Ports are commercially run organisations and are required to reinvest all profits back into the Port for the benefit of all port users and wider regional and local interests (the stakeholders). There are no shareholders to whom financial dividends are paid within MHIC. Any monies raised by MHIC and remaining after costs can only be spent *'in and towards the purposes of the said harbour'* (The Maldon Harbour Order, Sect. 23(5)).

MHIC are directed by a maximum of twelve unsalaried trustees called Commissioners for whom the Clerk and Harbour Master carry out the day to day operation of the Port.

Under various legislation, Regulations and Orders, MHIC's duties include:-

- To safeguard the public right to use and navigate the harbour;
- To find the best navigable channel, place sea marks to best advantage, and give warning if advertised depths are not maintained, with related powers to dredge, maintain and improve channels;
- To conserve facilities;

- To provide pilotage and provide navigation aids;
- To set dues;
- To appoint a Harbour Master;
- To make bye-laws; and
- To give direction,

There is a public right to use the harbour for the shipping and unshipping of goods and passengers. There is also a public right of navigation in harbour waters. However, the public interest is wider than that of harbour users and includes the local community and environment; and there are duties to ensure that these too are protected in the management of the harbour by the Commissioners.

MHIC have a duty to take reasonable care, so long as the harbour is open for public use, that all who may choose to navigate it may do so without danger to their lives or property. The function of MHIC is to regulate and facilitate the exercise of these rights.

Duties and powers rest upon HMIC corporately. Commissioners are collectively and individually accountable for the proper exercise of MHIC's statutory functions. The Commissioners have the power (and have always done so) to appoint a harbour master as a legal necessity for the proper execution of their duties and to properly entrust the operation of the harbour to professional and competent people. The harbour master is accountable to the Commissioners for the safety of operations in the harbour. The Secretary of State has power to give directions to a harbour authority or a harbour master if an accident or pollution incident has occurred. Among other things he may require a vessel, cargo, or oil to be moved or not as the case may be, or that specific salvage measures should be taken.

MHIC works closely with other statutory bodies such as the Maldon District Council. Although the Council operates under its own legislation and is responsible for its own land holdings such as the Hythe Quay and its many moorings, employs a River Bailiff and has a wider responsibility for the River Blackwater and its estuary outside the harbour area, the functions and responsibilities of each body are complimentary rather than duplicated. Although the Council, together with private landlords and the Crown, own land forming the harbour area, the powers regarding the regulation of commercial vessels within the harbour area have been conferred by Parliament on the MHIC through The Maldon Harbour Order and subsequent legislation. MHIC is responsible directly to central government for the regulation and safety of all vessels using the port, port security, and strategic and other planning. MHIC is therefore consulted by other statutory bodies, such as the Council as the local planning authority, on matters that impact on or affect the harbour area.

The Maldon District Council has the right of nomination to the MHIC.

Central Government requires MHIC and its Commissioners to hold themselves principally accountable for the discharge of their duties and powers to the national standards laid down. The government has entrusted the safety of marine operations in the harbour to a statutory authority (MHIC) and it clearly follows that MHIC are the 'duty holder' in all associated matters.

Harbour authorities must have a 'designated person' able to have oversight of the operations of its marine safety management systems. This person must have direct access to the board. In the case of MHIC, the 'designated person' has until recently been the harbour master and both posts were filled on an 'acting', unpaid basis. Whilst MHIC are committed to fulfilling all their statutory functions, the permanent appointment of a harbour master, on as economic terms as possible, remains a necessity for the proper administration of the harbour but for the time being the duties are being discharged on an ad hoc basis by the Commissioners.

MHIC have powers to collect dues from users to pay for the discharge of their statutory duties. They may levy such '*ship, passenger and goods dues as they think fit*'. The public right to use the Port for the purpose of the shipping and unshipping of goods and the embarking and landing of passengers is based on the 'open port duty'. This is exercisable '*upon the payment of the rates*

made payable by the local legislation for that port, and subject to the other provisions thereof, the harbour, dock or pier shall be open to all persons for the shipping and unshipping of goods and the embarkation and landing of passengers’.

The power to levy dues is conferred to ensure that the users pay for the discharge of the port authority’s legal functions. It is obligatory to reduce all risks associated with MHIC’s undertaking as low as reasonably practicable. It follows that MHIC also have the duty, so far as is reasonable practicable, to raise at least sufficient in dues to provide the resources needed to fully discharge those functions. To meet the standard required by Government for the Port Marine Safety Code for Maldon and other statutory obligations, sufficient must be raised in dues to fund adequately the full discharge of the requirements.

The Department for Transport requires the board of every harbour authority to be responsible for ensuring that adequate resources are provided to its officers to enable them to operate the policies, procedures and systems effectively, recognising that proper discharge of the authority’s duties will otherwise be compromised. This includes adequate resources for training.

Harbour Dues

Historically, all ‘commercial’ vessels using the Port were charged harbour dues. This included both motor-ships and sailing barges. Over time, motor vessels superseded sailing barges as the prime mover of the commodities traded in the Port. This trend continued until motor vessels were the exclusive commercial user of the Port. Time has seen this latter trend change again and the Port now sees sailing barges and their commercial activities once more to the fore.

For many reasons, MHIC did not for many years respond to these changes in trends and this resulted in a reluctance on their part to take an active interest in keeping pace with progress and a steady decline in the revenue available to the Commissioners. As a direct result of the Government’s review of ‘trust ports’ in 1999, new Commissioners were appointed and have sought to remedy the neglect of previous times under modern guidance from the Department for Transport. One important aspect of this is that *‘dues must be seen to be fair and equitable if they are not to be open to challenge. It is wrong for some port users to be exempted from dues when others making use of the port pay the market rate’.*

During 2003 and the following years, MHIC regularised its approach to charging dues and extended their scope to all commercial vessels using the Port. This therefore incorporated the sailing barges into the charging regime covering those times when they were ‘earning’, i.e. actually engaged in carrying goods or fare paying passengers.

A harbour authority’s power to levy dues is subject to a statutory right of objection to the Secretary of State. This is to ensure that the right of use of the harbour is not prejudiced by the imposition of unreasonable dues. An objector must have a substantial interest and an objection must relate to one of the following:-

- a) That the charge ought not to be imposed at all;
- b) That the charge ought to be imposed at a lower rate;
- c) That particular classes ought to be excluded from the scope of the charges.

The Department for Transport states *‘The statutory right to use a harbour is expressed to be subject to payment of dues. As a general principle, all those who use facilities for the shipping and unshipping of goods or the embarkation or disembarkation of passengers should contribute through dues to the safe operation of the harbour. Exceptional reasons are therefore needed to justify any exemption – whether total or partial’.*

Where an appeal made against dues is made to the Secretary of State, consideration will be given – amongst all other relevant considerations – to the need for resources to discharge fully the duties

of the harbour authority, and the requirements of the Port Marine Safety Code and other related regulations.