

Seafarer Complaints and other welfare issues reported to MACI (2019)

Introduction

The Shipping Master is an officer of the Maritime Authority of the Cayman Islands (MACI) who is appointed under section 10 of the Maritime Authority Law.

The Shipping Master primarily deals with crew issues including complaints regarding things such as accommodation, food, repatriation, working hours, payment of medical expenses and mediating on wage disputes. The Shipping Master is available to all crew on all vessels, even those that are fully privately registered where the Maritime Labour Convention (MLC) may not apply.

The remit of the Shipping Master is restricted to issues governed by the Merchant Shipping Law and associated regulations and any contract made thereunder. The Shipping Master may not be able to assist in non-contractual disputes and claims.

The Shipping Master also handles inquiries into the conduct and fitness of seafarers to serve, as well as births and deaths onboard Cayman Islands vessels.

What happens when a seafarer complains?

These reports are recorded, logged and followed up as appropriate.

- Any complaints made to the Shipping Master will be treated in strict confidence. However, should the seafarer wish this to be raised with the owner, Captain or management, the Shipping Master may have to name the complainant for the complaint to be acted upon. This will only be done if strictly necessary and only if the complainant has expressly given permission to be named;
- The Shipping Master will ask for as much information as possible and advise further, to try to resolve informally;
- Where informal resolution is unsuccessful the Shipping Master gathers evidence and, once express permission is given by the seafarer, writes to the owner, Captain or management to start mediation;
- If mediation proves unsuccessful then there is the option of a formal Shipping Master Decision which is binding on both parties¹.

This report examines the complaints and other welfare issues reported to MACI during 2019.

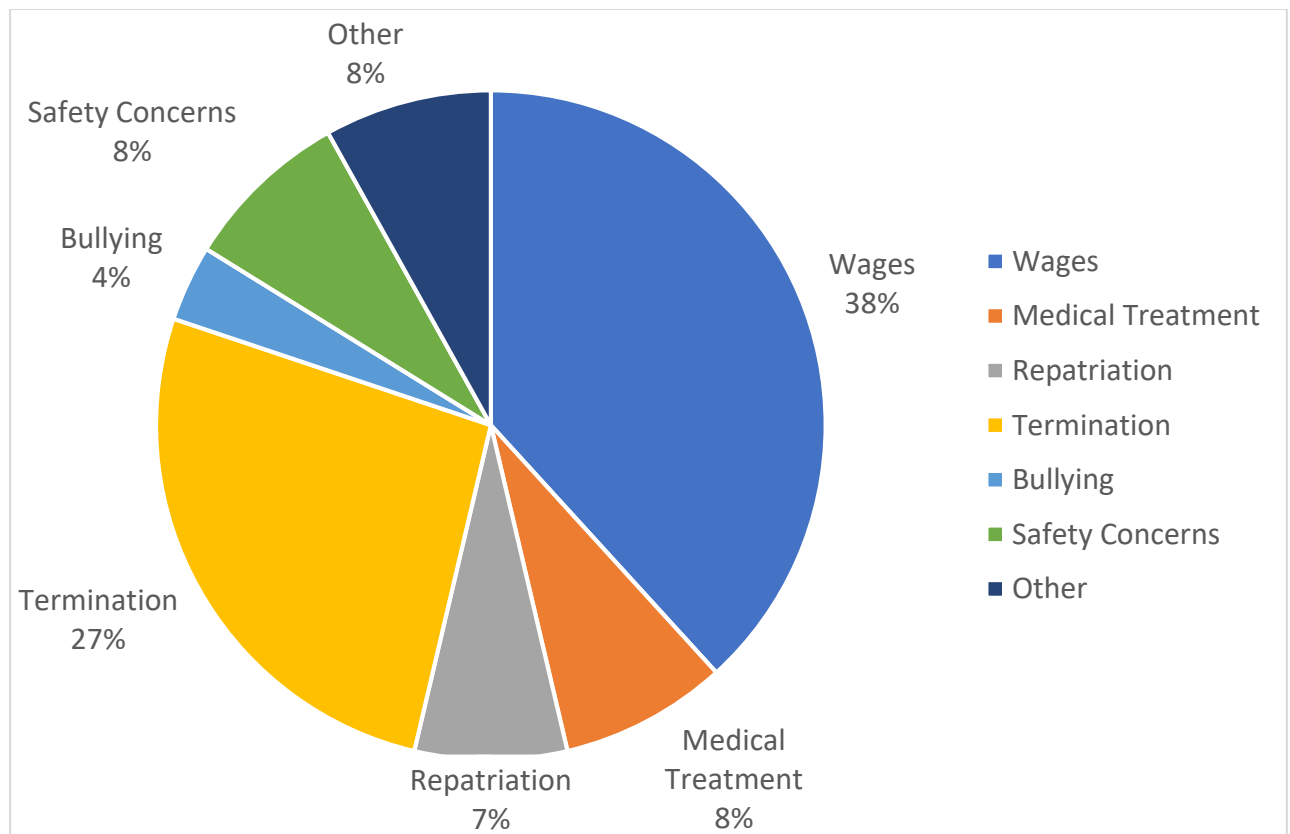
¹ See s96 of the Merchant Shipping Law (MSL) 2016 Revision

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Reported Complaints by Category of Complaint in 2019

A total of **137** complaints² were reported to MACI during 2019. These can be broken down as follows –

Wage disputes –	52	(38.0% of all complaints)
Medical Treatment –	11	(8.0% of all complaints)
Repatriation –	10	(7.3% of all complaints)
Termination –	36	(26.3% of all complaints)
Bullying –	5	(3.6% of all complaints)
Safety Concerns –	11	(8.0% of all complaints)
Other-	11³	(8.0% of all complaints)



² These are 92 separate complaints as some of the complaints cover more than one listed category

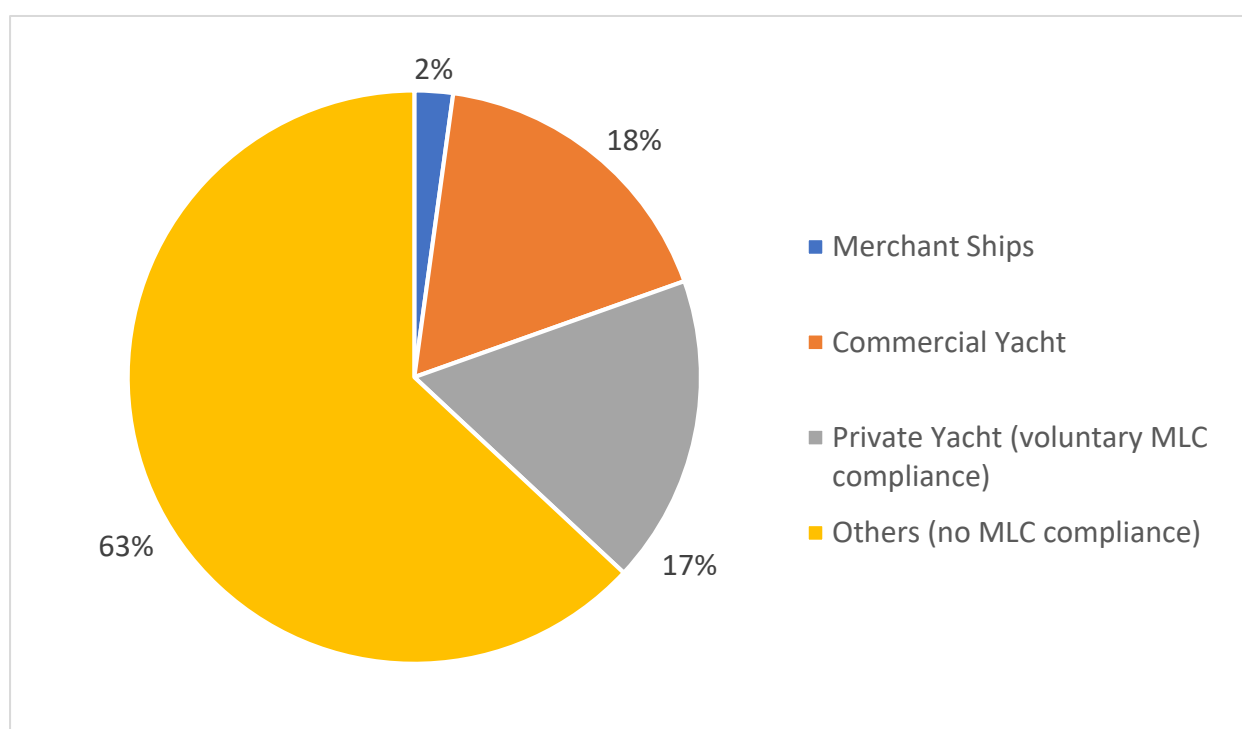
³ See Categories of Complaint section

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Complaints by Vessel Registration type in 2019

As well as breaking down the reports by “category of complaint”, the incidents were also analysed as to ship type as follows⁴ –

Merchant Ships -	2	(2.2% of all distinct complaints);
Commercial Yachts –	16	(17.4% of all distinct complaints);
Private Yachts (in voluntary MLC compliance) ⁵ -	16	(17.4% of all distinct complaints); and
Others (pleasure vessels, etc) ⁶ –	58	(63.0% of all distinct complaints);



Complaint rate by vessel type

Ship Type:	Number of units registered:	Number of complaints:	Complaint rate per ship type:
Merchant Ships	213	2	0.939 per 100 units
Commercial Yachts	115	16	13.9 per 100 units
Other Vessels (>24m) ⁷	949	79	8.32 per 100 units

⁴ This will include some multiple category complaints (as per note 1); these may also be complaints from multiple seafarers on a single vessel (each individual seafarer complaint is recorded separately).

⁵ Some pleasure vessels may choose to voluntarily comply with the Maritime Labour Convention (MLC), 2006 as part of the Large Yacht Code and these are recorded distinctly from those which do not choose to maintain voluntary compliance.

⁶ This category is restricted to vessels over 24m in length.

⁷ Unlike the previous section the “other vessels” have not been separated into those in voluntary MLC compliance and those that are not.

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Categories of Complaint:

Wages

Complaints about wages amounted to just over half of the complaints received by MACI in 2019. The majority of complaints relating to wages were for delays in payment. In addressing these sorts of complaints the Shipping Master (SM) normally advises seafarers to wait at least 2/3 weeks before involving the SM formally, though informal advice is given straightaway which often resolves the issue without formal involvement. In most cases the delays are short and may be due to an oversight, bank delays or public holidays in the owner's home country.

Sometimes wage delays are more "intentional" for instance when a seafarer has been terminated due to a falling out or for misconduct. In such cases there may be animosity on both sides and the SM does become formally involved. In such cases the SM sometimes needs to affirm to owners and captains that recovery from wages of any costs other than for the actual costs of repatriation, subject to a cap, (following termination with cause) is not permitted and any recovery from seafarers should take place in the courts but wages should be paid in full. In most cases when the SM becomes formally involved in such cases then the issue is resolved fairly quickly through mediation. Occasionally the two parties are unable to reach a mediated agreement in such cases there are two options; either a binding Shipping Master decision or either party can take legal action. There have been no requests for a formal decision regarding wages in 2019. A few disputes have resulted in legal action by one or both parties. In such cases the SM steps back from the dispute.

A complicating factor on some private yachts which are not voluntarily MLC compliant is where seafarers have no formal written contract. In such cases this makes involvement by the SM much more difficult. When a seafarer approaches MACI without a formal contract the SM cautions that it may prove difficult but tries to obtain as much information (text messages, emails etc) as possible to assist. Normally these disputes are resolved informally, as any other wage dispute, but sometimes where there is limited or no evidence it is impossible for MACI to become involved and these cases are closed either by the seafarer or the SM very early on. It is in both sides interests that all seafarer's have a written contract when working on any Cayman Islands vessel.

In addition to wage delays another complaint that is fairly regular relates to leave from previous years. The MLC and the Law (and the model Seafarer Employment Agreement (SEA)) indicate that leave should be used in the year it accrues and not be carried over from one year into the next. Obviously this requires the vessel to provide ample opportunity to take the leave, though force majeure should be a consideration (for instance if there is a serious illness affecting opportunity to take that years full leave entitlement). In such cases where ample opportunity has been given to take their leave then the SM will caution a seafarer making a claim for leave earned in previous leave years that this may be refused. A further regular complaint linked to leave accrual concerns leave whilst the seafarer is on some form of leave (i.e. annual leave, sick leave, special leave, unpaid leave). In such cases unless the contract states otherwise there is no accrual of annual leave.

Example: An owner refused to pay the entire crew due to a dispute with the previous Captain who appealed against their termination for gross misconduct. When the employer upheld the appeal the owner dismissed the employment company and refused to pay any of the remaining crew. Following extensive involvement from the Shipping Master and managers of the vessel the remaining crew were eventually paid a month late.

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Medical Treatment

There were 11 complaints involving medical issues during 2019 most of which involved delayed payment of medical claims where a seafarer paid themselves, or where the vessel has refused to provide treatment and the seafarer has had treatment anyway. The liability for legitimate medical claims is on the vessel (under MLC this is for medical care onboard and up to 16 weeks afterwards, for private non MLC vessels this is for the period onboard and up to the point of repatriation where necessary) and therefore as far as possible treatment should be arranged and paid by the vessel / employer. Sometimes this may not be possible such as when the seafarer is on leave or has left the vessel (but the need for treatment arises from their time onboard). In such cases they should try to involve the vessel so that they are aware of a potential liability. In such cases when faced with a liability the employer / owner may well choose to request a second opinion on any diagnosis.

Most claims were resolved quite quickly once the SM became involved and pointed out what probably should and shouldn't be paid. In one case there was a misunderstanding as to whether a seafarer on a private yacht without MLC compliance was entitled to medical care whilst working onboard. The SM confirmed that they are⁸ (though not necessarily for ongoing or later treatment after termination). Following this the seafarer's treatment was paid in full.

In 2019 there were some claims for "alternative therapies" which were arranged and paid for by the seafarer. The vessel disputed whether medical treatment of such therapies should be covered. The SM took the view that if the seafarer was referred for such treatment by a practising doctor to whom the seafarer had been referred by the vessel / employer then these should probably be covered. If the seafarer visited the "alternative therapy" practitioner independently then this would probably not be a liability on the owner. In one such case the seafarer was having an alternative therapy which was self-referred and finally visited a doctor referred by the vessel who indicated that the alternative therapy should be stopped immediately. In this case the SM indicated that the alternative therapy treatments would not be payable by the vessel.

Example: One complaint relating to medical expenses in 2019 resulted in a Shipping Master Formal Decision. In this case a seafarer on a private vessel without MLC compliance was working and aggravated a potentially pre-existing condition and visited the doctor for treatment (without formal agreement onboard) whilst working, and then shortly after departed the vessel to then a month later have further treatment. The parties did not engage in mediation and therefore it was agreed with both sides that a formal decision could be made. In this case the SM decided that the treatment received whilst onboard should be paid but the later treatment should not. Once the decision was made the owners paid the seafarer immediately.

Repatriation

There were 10 complaints where repatriation was part of the dispute though more often repatriation wasn't the focus of the dispute which was usually linked to termination, in particular when the

⁸ See s108 (1) of the Merchant Shipping Law, 2016 Revision: "If a person, while employed in a Cayman Islands ship, receives outside the Islands any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him."

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termination was for cause. In such cases the vessel is liable to arrange for the repatriation but may be able to deduct the costs of doing so from the final wages (usually up to \$1000 CI).

Other issues relating to repatriation involved places for return not being the home (or a different place during the early stage of employment) in the contract, which is acceptable where the seafarer agrees in the contract; or the seafarer wishing to delay repatriation rather than take it as soon as practicable or to fly somewhere else other than the place for return, both of these are not rights and could be seen as declining the right of repatriation. Finally as with wage disputes where no contract is in place it can be difficult to resolve such issues

Example: A seafarer departed the vessel to take a course (arranged by the vessel) and asked for flights to take place after the course which was agreed. The seafarer then resigned and needed to return home early for “personal reasons” and the managers initially refused to cover the costs to change the flight. The SM reverted to say it seems the seafarer was afforded a favour in having the flights later and perhaps an agreement to meet part way can be made. This was agreed and the dispute resolved amicably.

Termination

The second most common complaint (though often alongside with complaints about wages/leave pay or repatriation) in 2019 related to termination. In many cases these were allegations of “unfair dismissal” which can be very difficult to prove and for seafarers is generally excluded from employment tribunals in most jurisdictions⁹. The SM usually cautions on this at a very early stage in the dispute and suggests if the seafarer does wish to appeal their dismissal that they speak to a lawyer. The SM will still get involved in any linked complaints, such as delayed wages, which are normally resolved.

A fairly common complaint linked with termination occurs where accrued leave was offset against the notice period where the seafarer served some or all of their notice period off the vessel. Provided the contract does not prohibit this and any balance of leave or notice is paid¹⁰ there is nothing to prevent this from being implemented.

There were also many complaints relating to section 101(2) of the Merchant Shipping Law¹¹. This is meant to cover a situation where a seafarer is terminated with absolutely no notice following the sale of a vessel (and not offered alternative employment). In such cases he should be paid for the period of unemployment up to a maximum of two months (unless the contract states otherwise). Yachts are often sold and in such cases the new owner changes some or all of the crew. Many seafarers understand this clause to apply in all such cases even where they have been given notice of termination (or potential termination which can be rescinded by the new owner) and would result in a simple two month pay-out (regardless of notice period which is usually shorter than this). In the vast majority of complaints on this issue this clause would not apply and even if it did it may result in a smaller payment

⁹ Whilst Unfair dismissal is generally excluded the seafarer may be able to claim by virtue of his country of domicile

¹⁰ As an example a seafarer’s contract requires 30 days’ notice of termination and they resigned and were asked to leave immediately. At that stage they had accrued 45 days leave. In such case they should be paid the 30 days’ notice pay and then a balance of 15 days accrued leave. If they had 20 days accrued leave then they would simply be paid for the 30 days’ notice period.

¹¹ Section 101(2): “Where a Cayman Islands ship is sold while outside the Islands or ceases to be a Cayman Islands ship and a seafarer’s employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall, subject to subsections (3) and (4), be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date.”

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to the seafarer than if they were terminated normally as payments are conditional on remaining unemployed.

Example: On one vessel seafarers were unhappy at a request from the owner's representative to take the vessel to another port and refused to work. They were terminated with immediate effect and made a series of allegations. The owner initially refused to pay final salaries, leave and other non contractual claims. The SM was heavily involved in mediation between the seafarers, managers and the owners representative, in addition lawyers became involved both sides. Eventually the SM was successful in getting all but two of the claimants paid in full, however the owner refused to pay any of the disputed claims to two of the crew. These entered litigation and the SM closed the disputes.

Bullying

There have been 5 claims where bullying has been alleged and these are often linked to termination and often raised rather a long time afterwards. In such cases this may be very difficult to prove though the SM asks for as much information as possible and what action the seafarer wishes to be taken.

There have been a couple of fairly serious sounding complaints where MACI advised the seafarer and suggested involvement of local authorities (including the police) where vessel is located, and with the permission of the seafarer passed on anonymised information to the Cayman Islands Shipping Registry (CISR) survey team for noting and further investigation or enforcement action as deemed necessary.

Safety Concerns

There have been 11 complaints raising safety concerns as an issue. These are often linked to termination and often raised rather a long time afterwards.

Given that private vessels do not have to comply with SOLAS or the Large Yacht Code then complaints about "safety issues" on these vessels can be very difficult to investigate further unless the allegations would also break laws in the area (in which case MACI would advise involving the local authorities) or Cayman Islands Law in which case could MACI offer to inform the Royal Cayman Islands Police Service (RCIPS) for their consideration of whether further action is appropriate.

Where the claims seem reasonable on commercially registered vessels (Ships and Yachts), or private yachts which have chosen the voluntarily comply with the Large Yacht Code, the SM has with the permission of the seafarer passed on to the CISR survey team for noting and further investigation or enforcement action as deemed necessary such as noting on the file for future surveys or for an unannounced survey.

Other

There have been 11 complaints during 2019 relating to issues where there were not a significant number of similar complaints on such an issue as such these have been categorised as "other". These complaints concerned:

- Shore Leave - 1
- Accommodation - 1
- Food - 1

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- Visa costs - 1
- Standby wages - 1
- Change of contact terms - 1
- Colleagues - 1
- Discharge Book / reference - 2
- Hours of Rest - 1 (this is slightly surprising as anecdotally this is seen as a significant issue, in particular on yachts during “the season”, but only one complaint related to this in 2019).

Findings from 2019

Looking at the circumstances surrounding the seafarer complaints and welfare issues reported to MACI in 2019 there are a number of conclusions that are worth noting:

- There was an overall increase in complaints from previous years, though much of this was a result of a significant number of complaints from single vessels. Increase from 76 in 2018 to 92 in 2019 (though 2018 was a marked decrease on 2017).
- In comparison to other similar flags (including the Red Ensign Group) the Cayman Islands see a very high number of complaints.
- Very few (2%) complaints come from Merchant Ships, and very high percentage of complaints (80%) come from pleasure vessels in particular those without voluntary MLC compliance. MLC seems to be working but.....
-the complaint rate on commercial yachts is higher than that for all pleasure vessels and.....on more than one vessel where the ISM company has chosen not to be the “MLC Shipowner” there have been significant issues. It is essential that the ISM Company makes sure it takes its responsibilities under the ISM Code seriously where MLC is concerned and CISR surveyors will be looking into MLC issues during upcoming DOC audits.
- There are still many seafarers working on private yachts without contracts (though anecdotally it is believed this is far less common than in the past which may be linked to MLC awareness and seafarer expectations). As part of the planned revision of the Merchant Shipping Law it is intended that maintaining a basic contract (not SEA) will be made a statutory requirement.
- Increased awareness of bullying issues may have led to more complaints in this area.
- The vast majority of complaints are in relation to wage delays and / or leave issues, in particular where seafarers are required to use leave during their notice period.
- Most complaints are resolved fairly successfully and rapidly once the Shipping Master becomes formally involved.....or often if the seafarer mentions that the SM has been made aware of the issue!

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Limitations

This report is a presentation of raw data with limited analysis. The sample sizes are small, variables are large, and no formal statistical analysis has been undertaken. Where limited analysis has been undertaken there is no evaluation of statistical significance.

“What is reported” does not automatically correlate to “What has occurred”.

Reporting Complaints and other welfare issues

Complaints, concerns about working conditions and other welfare issues occurring on Cayman Islands vessels should be reported to the Maritime Authority of the Cayman Islands –

By email: shipping.master@cishipping.com

Via the website: Please click [HERE](#)¹²

By telephone: +44 1489 799 203 or +1 345 9498831.

Maritime Authority of the Cayman Islands.

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¹² <https://www.cishipping.com/policy-advice/shipping-master/contact-form-1>