

Know when escort operations begin and end

When things go wrong with escort tug assistance, they will do so quickly, write **Simon Tatham** and **Mike Lacey***

Escort tug assistance is generally of a standby nature and, if hooked up, with a slack line, following pilot's directions. But when things go wrong, they will do so quickly. The risks that escort tugs are intended to avoid are primarily those resulting from a blackout or loss of steering control in narrow waters leading to a grounding or collision. Risks to the tug itself include girting, collision or grounding.

Recent incidents involving tug capsizes and loss of life include the *Flying Phantom* in fog on the Clyde in December 2007 and the collision and capsizing of the tug *Fairplay 22* in November 2010 while manoeuvring in strong winds to connect up off the Hook of Holland. In the event of a serious incident, attention will first be focused on cause and will then turn to liability as significant claims (including for pollution, salvage or wreck removal) may follow. Alternatively, where an extraordinary danger to the tow has been averted by the tug's actions, the prospect of a salvage claim will arise.

From a legal standpoint the starting point is typically that the harbour authority will, after consultation, promulgate regulations specifying the size of ships requiring escort, the Class and specification of the tugs, the distance of the escort service, routing of the escort passage and whether the escort tug is to be made fast.



Simon Tatham (Tatham Macinnes): "The tugowner is always able to limit his liability"

This will depend entirely on the topographical and weather characteristics of the port relative to the size and type of a visiting ship/its cargo and this will be tied in with the requirements for pilotage and minimum under-keel clearances, especially where tide is a factor. There might also be designated abort areas where the vessel can be turned or held pending further services. Unless the escort passage is a short one, Escort Class Notation has become the norm as fast and powerful tugs are necessary to keep up with tankers and perform their steering and braking requirements as well as fire-fighting, if required. Most passage plans require only one tug, invariably secured aft, unless passive escort is permitted, although in the most treacherous areas or for very large tankers, a forward tug may also be a requirement.

Some terminals, such as those operated by the oil majors, offer service contracts to tug operators extending for five years or more. Those operators will provide exclusive around-the-clock waterborne services including towing, escort and berthing. These are detailed and onerous contracts, with the terminal operators careful to ensure that the tug operators are always independent contractors. Although contracts may contain limited 'knock for knock' provisions, they will inevitably be somewhat one-sided in favour of the terminal.

The alternative practice is a free market within the port, especially if there are numerous terminals to be serviced. Tug operators still have to provide Escort Notation tugs if that

is a requirement of the port's regulations and mandated by the escort passage plan. Specific terminals, for instance LNG ones, might have their own dedicated tugs to ensure constant availability of assistance.

Irrespective of which in-port system prevails, escort and other tug services, almost without exception, will in the UK be provided on the UK Standard Conditions for Towage and Other Services (1986). Similar terms apply elsewhere, the UK Standard Conditions being the model. We will now examine how this apportions responsibility.

When does the escort operation actually commence and cease? Where a tug is engaged simply to tow, commencement is usually when the tug is in a position to receive orders including to hook up; the operation will end on final orders, release of any line, and when safely clear. However, in an escort service, the mobilisation and return passage, categorised as services 'other than' towing or escorting, still fall within the protective ambit of the contract as the tug has been put at the disposal of the hirer and logically the same applies during demobilisation, unless agreed otherwise. As such, if the tug is damaged, a right of indemnity arises. During the escort operation the tug is deemed to be the servant of the hirer who will thus be vicariously liable in the event of, say, a collision with another vessel, even if caused solely by the negligence of the tug. The tug, if sued, will have a right of indemnity from the hirer. So long as the above damage does not result from unseaworthiness of the tug resulting solely from the personal fault of the tugowner, the tugowner may look to the hirer for his own damage and is held harmless against all damage to the tow and her cargo or from third-party claims arising. Claims against the tugowner for loss caused by delay are wholly excluded. The only exception to this regime is loss of life and personal injury. These protections extend to the tug master and crew through a standard Himalaya type clause. In any event, the tugowner is always able to limit his liability to levels that are low relative to the potential risks. **TST**



Mike Lacey (TugAdvise): "Risk of blackout or loss of steering in narrow waters"

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