

SPECIAL REPORT: Pilotage

MARINE pilots in Australia are exempt from civil liability, but the same protection does not apply to regulatory or criminal liability. A criminal prosecution for the conduct of a pilot has not yet resulted in imprisonment in Australia but sentencing in a recent United Kingdom case moves this possibility a step closer to home.



On 3 December 2015, the Panamanian car carrier, *City of Rotterdam*, collided with the Danish flagged ro-ro vessel, *Primula Seaways*, on the River Humber, UK.

The pilot of the *City of Rotterdam* was charged with misconduct endangering a ship contrary to section 21 of the Pilotage Act 1987.

The master was charged with conduct endangering ships, structures or individuals, in contravention of the Merchant Shipping Act 1995 sections 58(2) and (5).

Both the pilot and the master pleaded guilty and received four-month suspended sentences with a fine of £45,000 for the pilot and £750 for the master.

Both vessels sustained major damage, but there were no injuries and both vessels were able to navigate unassisted back to the port.

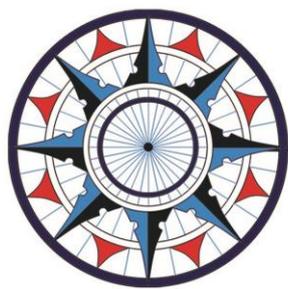
Yet, the regulatory body decided to lay criminal charges, and the court considered that imprisonment was justified for the alleged mistakes in navigation.

What is the source of this disparity between the factual circumstances and the prosecution response?

One cause of misunderstanding may be the separation of the safety investigation conducted by the safety authority, UK Marine Accident Investigation Branch (MAIB) from the prosecution inquiry of the regulatory body, the Maritime and Coastguard Agency (MCA).

The MAIB produced a detailed and comprehensive safety investigation report on the *City of Rotterdam* collision accident that contains insightful information and explanations.





However, this report is not admissible as evidence in court proceedings, and vitally, evidence obtained during the MAIB investigation, including the voyage data recorder, is confidential and not available to third parties, without a court order.

The result is that the safety investigation report and the evidence revealing the full causes and circumstances leading to the collision may not have been available to assist the exercise of prosecutorial discretion.

The justification for these rules is that the safety authority will be able to obtain more evidence, with greater honesty and openness, from those involved in an incident if they are not worried about any consequences for what is said or revealed.

A complete, honest and in-depth safety investigation may help prevent future incidents, and this is in the public's interest.

The separation of safety investigation from prosecution inquiry stands on sound policy, but in practice there is a risk it could lead to a disconnection between the causes of an incident and a resulting prosecution.

Most concerning is that notwithstanding the findings of the MAIB report, the decision to prosecute occurred regardless.

With regard to the *City of Rotterdam*, the MAIB investigation report was presented in February 2017 and concluded that:



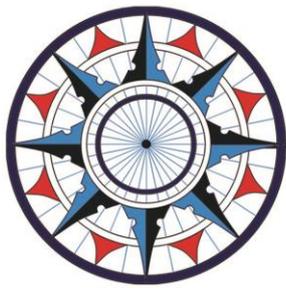
- The pilot had suffered from 'relative motion illusion' that distorted his spatial awareness, and deceived him into thinking that his view through a side window was in fact the forward direction that the *City of Rotterdam* was travelling in.
- The *City of Rotterdam's* bridge design, with sloping windows, hemispherical shape, and the lack of a sightline to the bow or any other visual references, contributed to the pilot's relative motion illusion, and errors in navigation. The inward sloping windows are non-compliant with SOLAS, and an exemption for this was provided by the flag state, Panama.
- That there was a lack of communication between the *City of Rotterdam's* master, third officer, and the pilot, the master of *Primula Seaways*, and the vessel traffic services.

These conclusions and the recommendations are very instructive for the industry as there are two ships with this sloping window hemispherical bridge, and naval architects and engineers are now aware of the dangers of this efficiency-seeking design.

Judge Jeremy Richardson QC, acknowledged the bridge design as a key contributor to the incident, and noted that the weather was a contributing factor, and yet proceeded to give a four-month sentence to the pilot and master.

In times past, before safety investigation became the norm, it was usual for the safety investigation and prosecution inquiry to be combined in a single marine inquiry.





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One of the key features of the now obsolete marine inquiry was the use of nautical assessors to directly advise the tribunal on issues of nautical expertise.

One might speculate that had a marine inquiry been conducted instead of two separate investigations (one safety and one criminal), that a recommendation for criminal charges and imprisonment may not have followed this incident.

In the author's view, given the design of the vessel involved, it is unlikely that a court of marine inquiry, properly advised by the nautical assessors, would have considered the conduct of the master and pilot worthy of a custodial sentence, that is, their conduct was "so serious that neither a fine alone nor a community service can be justified for the offence".

Separation between the reporting of the safety authority and the regulatory body exists in Australia also.

The Australian Transport Safety Bureau (ATSB) is the safety authority equivalent to the MAIB, and the Australian Maritime Safety Authority (AMSA), and the state marine safety regulatory bodies are equivalent to the MCA.



Australian Government

Australian Maritime Safety Authority

The objectives of MAIB and ATSB are mirrored and state that they operate to prevent future incidents by investigating the causes and circumstances of marine accidents. Additionally, it is explicitly stated that they do not apportion blame or provide the means to determine liability.

The same rules regarding the voyage data recorder and other evidence are encompassed in the Australian Transport Safety Investigation Act 2003 (Cth).

The reports themselves are not admissible as evidence in any court.

Additionally, voyage data recorders, or on-board recordings, and most evidence collected is confidential, subject to a court order on a test of public interest in the administration of justice.

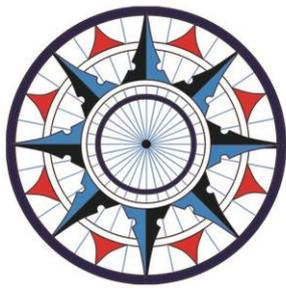
Even then, the on-board recordings cannot be used as the grounds of disciplinary action, are not admissible in criminal proceedings against crew members, and have a very small window of court ordered admissibility in civil proceedings.

The *City of Rotterdam* highlights the paradox that lies at the heart of a divided investigation system.

A consequence of the repeal of the marine inquiry laws in the UK and Australia is that the regulatory bodies may now lay criminal charges against pilots directly.

The trend is increasingly towards prosecution and imprisonment of pilots, as evidenced in other jurisdictions such as the USA (*Cosco Busan* allision with a bridge), and Hong Kong (*Yang Hai/Neftegaz-67* collision).





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In last year's article, I asked rhetorically whether a pilot could be imprisoned for an incident in Australia. After the City of Rotterdam case, I am confident that the answer is an even more certainly yes.

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