A major change

Practical and legal aspects of tanker vetting – how the process has developed, and how legal requirements have kept pace (or not)

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Modern vetting practices have been established over a number of years to a set process that is understood by the stakeholders that form part of this system. As a risk assessment tool, vetting has undoubtedly acted to improve the standards of operations and management of vessels in the oil and gas market.

The changes to the vetting practice in that a vessel is now approved for a particular cargo only adds to the continued positive standards that are required to be maintained by vessel operators.

SIRE as the standard

The first Ship Inspection and Reporting Programme (SIRE) database was launched in 1993. This was a place where an oil major could submit their own inspection reports for vessels and allow access to those reports by other oil majors. It was not until 1997 that the vessel inspection procedure was standardised by the publication of a unified Vessel Inspection Questionnaire (VIQ), which provided the questions to be addressed during the inspection, and the Vessel Particulars Questionnaire (VPQ), which addresses information provided directly from the vessel.

A SIRE inspection is based on the questions contained within the VIQ – approximately 500 questions split over 12 chapters. The inspection must be carried out by an accredited SIRE Inspector, who must be either a Master or Chief Engineer with significant experience in rank, sponsored by one (or more) oil majors as a SIRE Inspector.

The purpose of a SIRE inspection is to provide an in-depth review of a vessel for the purpose of risk assessment. All aspects of the vessel must be observed during the inspection, which on average takes between 8-12 hours. Around three hours of this is dedicated to review of certificates and safety management system records.

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During the course of the inspection the SIRE Inspector will compile a list of observations that should be presented to the Master of the

Founding SIRE

The Oil Companies International Maritime Forum (OCIMF) was established in 1970 as the industry’s response to major oil pollution incidents, most notably the *Torrey Canyon* disaster in 1967.

The Torrey Canyon *was a jumbo-ised tanker that had been increased in capacity from 60,000GRT to 120,000GRT. While on passage to Milford Haven, fully laden with a cargo of crude oil loaded in Kuwait, she grounded on Seven Stones Reef. This location is part way between the Cornish Coast and the Scilly Isles. The vessel was severely damaged in the grounding, and salvage attempts to refloat her were unsuccessful. This resulted in the loss of her entire cargo.*

The British Government took charge of the salvage/pollution response efforts which led to a decision to set both the vessel and the oil spilled on fire. It was achieved by bombs and flammable products (aviation fuel and petroleum jelly) being dropped onto the vessel.

This was not the finest hour in salvage practice for the British Government, however it did result in many lessons being learnt.

A number of major oil pollution incidents occurred over the following decades. During the initial period international conventions were being established and improved, including SOLAS and MARPOL, but such necessary changes to impact on the safety of vessels were slow to be implemented within the industry.

Incidents continued to occur on vessels that, if viewed on paper, posed no risk. They were fully classed with all statutory certification up to date. Many oil majors felt that the reliance on the class and statutory status of a vessel failed to fully reflect the true condition and subsequent risk posed by chartering the vessel. They decided to take this matter into their own hands, effectively saying to owners, ‘if you would like to carry one of our cargoes, we need to look at your vessel’.

Informal inspections by oil majors grew in number as more and more companies adopted this practice as part of their internal Risk assessment procedures. Vessels were inspected many times in a single year, with each inspection focusing on safety criteria specific to the individual oil major carrying out the inspection. The volume and differences in each of these inspections were especially burdensome to the owners, Master and crew of a vessel.

Over time it was recognised that there was a reasonable overlap of common points within inspections. This meant that multiple inspections would not be necessary so long as that information could be shared. And so the Ship Inspection and Reporting Programme (SIRE) was born.

vessel. These are not deficiencies as you would see on a Port State Control inspection or non-conformities, as under ISM, but rather the SIRE Inspector's objective view of things observed during that particular inspection which appeared to not be in compliance with good practice. Observations are made in accordance with the guidance notes to SIRE Inspectors contained within the VIQ.

The SIRE Report is usually completed within 72 hours of the SIRE Inspector departing from the vessel. The inspector is required to provide comments to those items in which he has made observations, and also to a number of items highlighted in yellow in the VIQ that regardless of response require a comment to be included.

The SIRE Report is not immediately live on the SIRE System for access by all parties. The report is held for 14 days once it has been issued to the owner/operator before it is made more widely available. This is to allow the vessel operator to provide their comments/response to the observations within the report.

While the SIRE Report reflects the condition and procedures engaged on the vessel at a certain date, vessel operators should not allow it to be the full picture and should always try to give clear responses to the report. This is their opportunity to 'set the record straight'. Any vetting decision, as discussed below, will be based on all relevant information available.

Responses provided by operators should show that the observations have been investigated fully. Where the observation has been closed out, the evidence supporting that should be included. If appropriate it should be shown what steps have been taken to ensure this type of observation does not arise again and how these steps has been implemented across the fleet.

Vetting – more than just a SIRE report

Vetting is a system of risk assessment employed by oil majors to limit their exposure to potential claims arising due to the mishandling or spillage of cargoes whilst onboard a chartered vessel. Review of the SIRE report is only one aspect considered. The aim is for a vessel to be positively vetted and be accepted for cargo. (A positive vetting means that a vessel would be available to be chartered.)

In the early days of vetting an oil major provided a vetting approval which lasted for a set period of time, meaning that a vessel could be utilised for cargoes throughout that period without being reassessed. This was given in the form of an 'approval letter' and would be given very soon after a SIRE Inspection had been made.

This method of approval was eliminated many years ago, and all oil majors now conduct a vetting process on each vessel prior to every cargo. The approval is therefore only valid for a single cargo, and subject to the vessel's continued compliance with the standards that have been demonstrated during the vetting process.

All oil majors employ their own methods and systems for vetting to determine how a risk is to be assessed. The commonalities in all of these systems are the sources of information on which any vetting decision is based. These include, but are in no way limited to, the use of OCIMF SIRE inspection reports, OCIMF VPQ reports, port and flag state control inspection reports, responses to Intertanko's Q88 questionnaire, Lloyds casualty reports, class documentation, OCIMF Tanker Management Self Assessment (TMSA) Status, previous charter history, and the particular requirements for the trade and terminals for the proposed voyage.

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On completion of a vetting process the oil major will confidentially advise the owners/vetting operators whether or not the vessel was successful. This correspondence will either imply 'approval' (ie, '… we require no further information at this time…') or clearly state rejection.

In the event of a rejection, procedures vary between oil majors. Some clearly state a given period of time before a re-inspection will take place (almost always three to six months), some will be less precise ('following a sufficient period of time').

Even if a vessel has been successful in vetting for a particular cargo by a particular oil major, this is by no means a guarantee that it will be successful subsequently. A vetting decision is influenced by many factors, from the practical points that the vessel is too large/too small for the contemplated ports, to items of a more serious nature such as an incident or negative PSC deficiencies or condition of Class imposed since the last SIRE Report and positive vetting took place.

All the above means that an owner can never guarantee that the vessel will be accepted by any oil major, even when vetted by an inspecting oil major that may have (recently) conducted a satisfactory SIRE inspection. The 'approval' status of the vessel is even more uncertain for other oil majors, who may view what the inspecting company has implied as satisfactory as quite the opposite.

The myth of the 'Vetting Approval'

It is fair to say that vetting plays a key role in securing business for tankers throughout the market regardless of size or trade. The importance of a vessel being suitable for trade in this manner is recognised in that vetting clauses are incorporated into charterparties.

However, all vetting clauses are not created equal,

and due consideration should be given to incorporation of a suitable clause when a vessel is fixed for hire.

Some of the common features of these clauses are:

- That a vessel shall have been inspected in accordance with the SIRE system;
- That inspections should have been completed by a named range of oil majors;
- Concept of vetting and inspection are mixed within the clauses;
- Warranty of approval and/or acceptance of vessel;
- Failures and rectification of failures.

Unfortunately, these vetting clauses rarely reflect the true practice of modern vetting. As a result, they often contain obligations which it is simply impossible for the owner/operator to comply with. That said, there are some more recently drafted Clauses which go some way to reflect the true nature of modern vetting.

Two tales of one clause

The *Rowan* (ROWAN [2011] 2 Lloyd's Law Rep 331 & [2012] EWCA Civ 198) stands as one of the most recent case precedents concerning vetting. At the heart of the case is an observation in a SIRE report that led to a negative vetting decision being made by an oil major. The question to be determined by the Court was the application of the obligations and meanings of the vetting clause within the charterparty which required a number of oil major 'approvals' to be maintained.

The Commercial Court took a very strict view on the interpretation of the vetting clause. It held that the clause meant that the owners were under an obligation to maintain 'approvals' from oil majors throughout the term of the charterparty. This effectively meant that if any issue arose with the vessel after gaining 'approvals' that would impact on the status of such approvals, the owners would be in breach of the warranty given in the vetting clause.

The owners appealed the decision of the Commercial Court and were successful. The appeal focused on the construction of the charterparty as a whole. They found that the wording of the recap with regards to the vetting clause acted to replace the clause in its entirety. It was not to be read with the vetting clause.

The effect of the recap amendment was to limit the warranty to the known approvals at the time of entering the charterparty. This did not amount to a continued warranty throughout the duration of the charterparty. Any breach of warranty would have to be found in relation to the knowledge that owners had of approvals on the date of the charter only.

It appears that the drafting of charterparty clauses has not kept up with the changes to vetting practices. Many of these clauses have not been updated and place unrealistic obligations on the parties. A close review should be made of these clauses when entering into a charterparty to consider if the wording places unreasonable risk that there may be a breach of the vetting clause.

The Appeal of ROWAN gave a measured decision to a difficult problem. In finding as they did, the Court of Appeal provided a fair interpretation of the charterparty which more closely reflected the realities of modern vetting practice than the original vetting clause.