

Seafarer Complaints and other welfare issues reported to MACI (2020)

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 welfare issues including complaints regarding things such as accommodation, food, repatriation, working hours, payment of medical expenses and assisting resolution of 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) does 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 is generally not 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, master 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 2020.

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

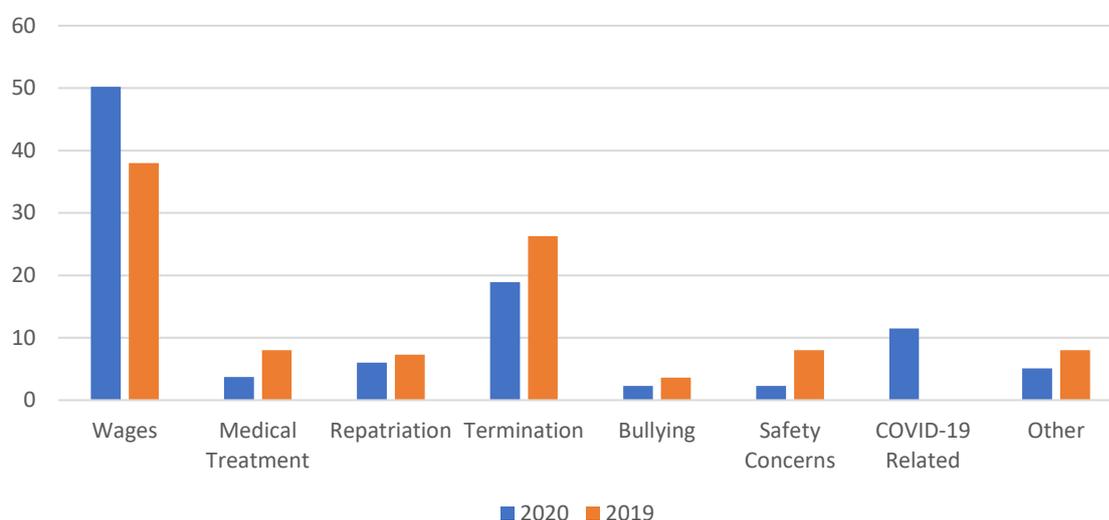
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Reported Complaints by Category of Complaint in 2020

A total of **217** complaints² were reported to MACI during 2020 an increase of 80 compared to 2019. These can be broken down as follows –

	2020		2019		Change
	Num	%	Num	%	
Wage Disputes	109	50.2%	52	38.0%	+57
Medical Treatment	8	3.7%	11	8.0%	-3
Repatriation	13	6.0%	10	7.3%	+3
Termination	41	18.9%	36	26.3%	+5
Bullying / Harassment	5	2.3%	5	3.6%	-
Safety Concerns	5	2.3%	11	8.0%	-6
COVID-19 Related	25	11.5%	n/a	n/a	n/a
Other ³	11	5.1%	11	8.0%	-

Percentage of reported complaints by category of complaint (2019 and 2020)

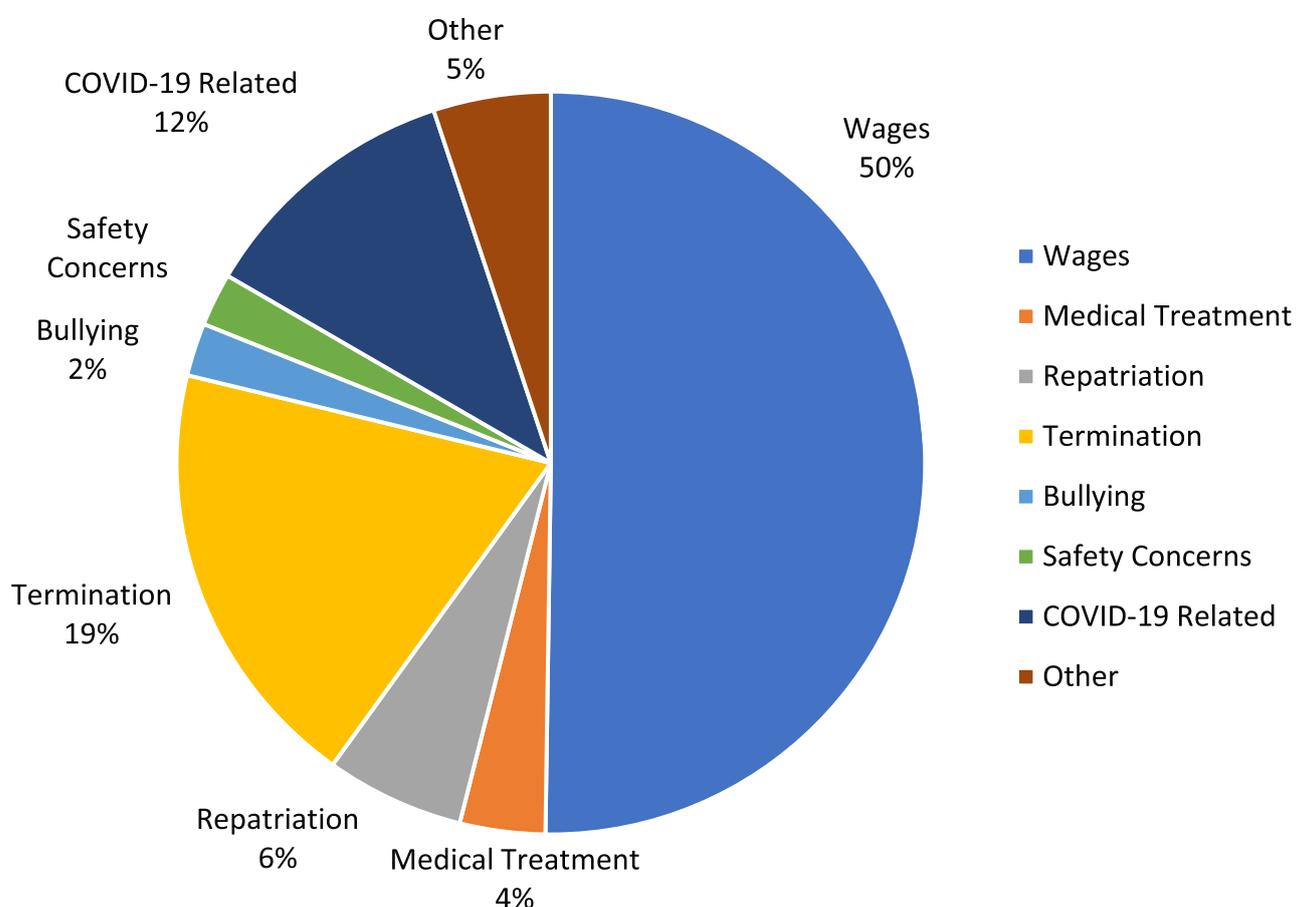


² These are 168 separate complaints as some of the complaints cover more than one listed category

³ See Categories of Complaint section

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Complaints by Category of Complaint reported during 2020



Complaints by Vessel Registration type in 2020

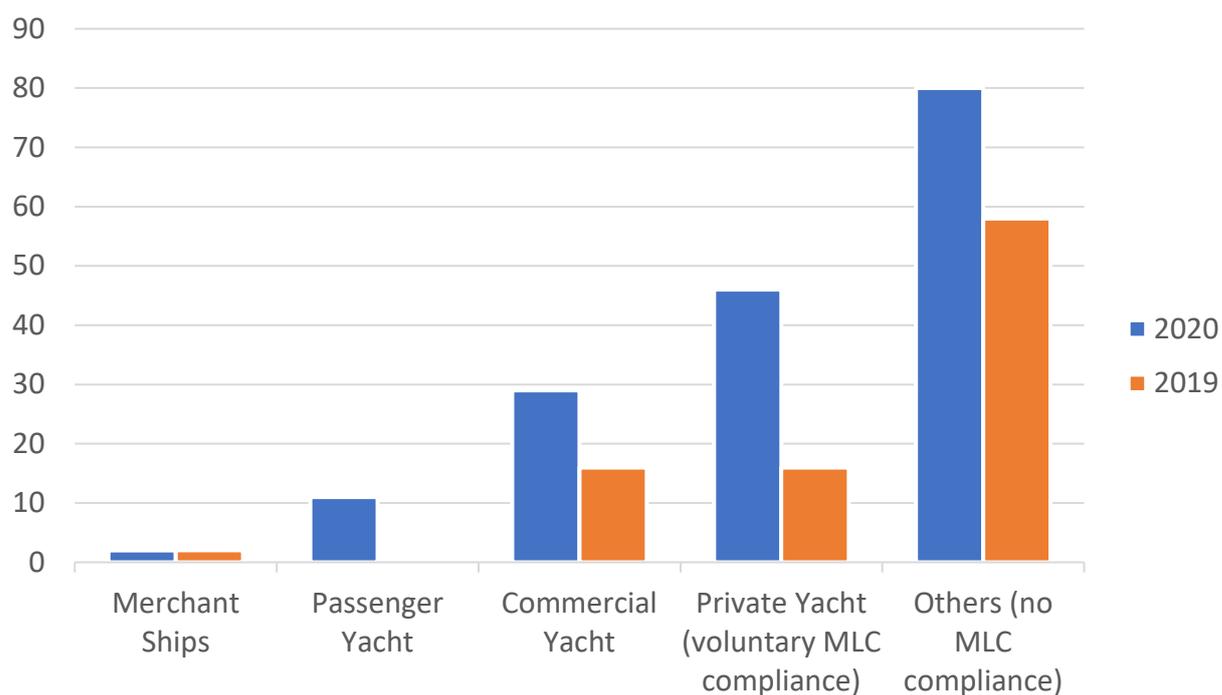
As well as breaking down the reports by “category of complaint”, the incidents were also analysed as to ship type as follows⁴ –

	2020		2019		Change
	Num	%	Num	%	
Merchant Ships	2	1.2%	2	2.2%	-
Passenger Yacht Code Compliant Vessels	11	6.5%	n/a	n/a	n/a
Commercial Yachts	29	17.3%	16	17.4%	+13
Private Yachts (in voluntary MLC compliance) ⁵	46	27.4%	16	17.4%	+30
Others (pleasure vessels, etc) ⁶	80	47.6%	58	63.0%	+22

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.

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Complaint rate by vessel type

Ship Type:	Number of units registered:	Number of complaints:	Complaint rate per ship type:	2019 Rate	Change
Merchant Ships	207	2	0.97 per 100 units	0.939 per 100 units	+ 0.031
Commercial Yachts ⁷	111	40	36.04 per 100 units	13.9 per 100 units	+ 22.14
Other Vessels (>24m) ⁸	963	126	13.08 per 100 units	8.32 per 100 units	+ 4.76

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

⁷ Includes Passenger Yacht Code Compliant Vessels

⁸ 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 half of all of the complaints received by the Shipping Master (SM) in 2020. This was a significant increase both in actual numbers (more than double) and in the percentage of total complaints.

The majority of complaints relating to wages were for delays in payment. In addressing these sorts of complaints the SM normally advises seafarers to wait at least 2/3 weeks before involving the SM formally. However, 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 a reluctance on both sides to resolve amicably 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 negotiation. Occasionally the two parties are unable to reach agreement and 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 2020. A few disputes have resulted in legal action by one or both parties. In such cases the SM necessarily 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 seafarers 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 the minimum period of 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. It would not be surprising if as a result of the impacts of the COVID-19 pandemic that there are a lot of queries or complaints about leave carry over/paying out arising in 2021.

Example: One yacht led to a lot of repeated complaints. This yacht was at the beginning voluntarily MLC compliant but later in 2020 dropped compliance. The Shipping Master engaged with managers (MLC Shipowner until MLC was dropped), employers and unions. The Shipping Master also involved the

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Cayman Islands Shipping Registry (CISR) survey team for noting and further investigation or enforcement action as deemed necessary. After about 6 months of delays of varying lengths where wages were sometimes 1 week late but on occasion more than 2 months later these issues seemed to be resolved.

Medical Treatment

There were 8 complaints involving medical issues during 2020, this is a drop from 11 complaints last year despite there being a strong focus on health in the last year. Most of these complaints 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). 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 vessels choose to maintain insurance against their liabilities for sick pay and medical treatment. However, it must be pointed out that even if insurance is held if there is any shortfall on any legitimate claim (such as a deductible or limit) or the insurance does not pay out the owner would still be liable for the whole costs.

Most claims were resolved quite quickly once the SM became involved and pointed out what probably should and shouldn't be paid. On occasion there were misunderstandings as to whether a seafarer on a private yacht without MLC compliance is entitled to medical care whilst working onboard. The SM confirmed that they are⁹ (though not necessarily for ongoing or later treatment after termination).

Example: A Seafarer became unwell onboard a yacht they saw a local doctor and was signed off (though the precise illness was undiagnosed). The seafarer was then terminated. Upon the seafarer's arrival home the illness was diagnosed and the seafarer was formally signed off but the employer said they wouldn't cover expenses or sick pay after termination. The Shipping Master confirmed that if the illness commenced whilst onboard the shipowner is liable to expenses and sick pay until the seafarer is declared fit for work. The employer eventually paid all expenses and sick pay.

Repatriation

There were 13 complaints where repatriation was part of the dispute as in previous years often repatriation wasn't the focus of the dispute which was usually linked to termination, in particular when the 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 and it should be noted that this is a cap and not an absolute figure). Whilst the total number of complaints increased slightly from last year as a percentage of the complaints there was a marked decrease.

⁹ 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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In 2020 the COVID-19 pandemic severely affected flight availability and access in general to repatriation in many parts of the world throughout the year and into 2021. There is much general awareness of there being significant issues with seafarers being unable to be repatriated and staying onboard well in excess of their contractual periods of service. More on this is discussed in the COVID-19 section of the report but there were few actual complaints relating to repatriation and COVID-19.

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. This is acceptable where the seafarer agrees in the contract or the seafarer wishes 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: Early on in the COVID 19 pandemic a seafarer was maintained by the vessel for a long time (10 weeks) due to no flights being available at all to their home country. The managers eventually managed to secure a flight and unfortunately, despite the considerable efforts that the managers made (assisted by the SM), the seafarer did not turn up at the airport to take the flight as they had obtained other employment but did not inform anyone.

Termination

The second most common complaint (though often alongside complaints about wages/leave pay or repatriation) in 2020 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 jurisdictions¹⁰. 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.

Fairly common complaints linked with termination occur 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 paid¹¹ there is nothing to prevent this from being implemented. Although unfair dismissal is generally not available, action for wrongful dismissal, (where the termination provisions of the contract are not followed) is actionable and the SM will assist in these cases.

There were a number of COVID-19 related complaints relating to termination and some of these will be discussed in the COVID-19 section of this report.

Example: On one vessel the entire crew all laid off in one go but wages were delayed by more than one month despite the seafarers regularly asking the managers of the vessel. This was all resolved very quickly without the need for “formal” involvement once the Shipping Master suggested they approach MLC shipowner rather than the day to day managers.

¹⁰ Whilst Unfair dismissal is generally excluded the seafarer may be able to claim by virtue of his country of domicile

¹¹ 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.

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Bullying and harassment¹²

There have been 5 claims where bullying and/or harassment has been alleged which is the same number as 2019. Sometimes these complaints are 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 was a quite serious allegation which resulted in the complainant feeling extremely unsafe and initially, due to the lack of flights resulting from the COVID-19 pandemic, being unable to disembark. The SM worked quickly and effectively with the DPA of the management company to address this and the seafarer was moved to another vessel nearby and then flown home on a chartered flight at very short notice.

There has been another fairly serious sounding complaint where MACI advised the seafarer and suggested involvement of local authorities (including the police) where vessel is located. With the permission of the seafarer passed on anonymised information to the CISR survey team for noting and further investigation or enforcement action as deemed necessary.

In addition, whilst there have been no examples of this in 2020, where an allegation may be considered a breach of Cayman Islands criminal law MACI could offer to inform the Royal Cayman Islands Police Service (RCIPS) for their consideration of whether further action is appropriate. In most cases criminal activity would be investigated in the jurisdiction that the conduct was alleged to have taken place although the RCIPS may investigate crimes conducted on Cayman Islands vessels in international waters.

Safety Concerns

There have been 5 complaints raising safety concerns as an issue. This is a significant drop from 2019 where there were such 11 complaints.

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 the latter case could MACI offer to inform the Royal Cayman Islands Police Service (RCIPS) for their consideration of whether further action is appropriate. Whilst it is difficult to action such issues for purely private yachts, MACI does have the option to remove Certificates for vessels that may choose to hold these voluntarily, in the case of breaches of safety requirements.

When the SM has the permission of the seafarer and 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 passed on the claims to the CISR survey team. They noted and further investigation or enforcement action as deemed necessary such as noting on the file for future surveys or for an unannounced survey.

COVID-19 Related Complaints / queries

The COVID 19 Pandemic has clearly had a considerable impact on the whole world not least the shipping industry and this has led to a lot of queries and complaints to the Shipping Master. There have been 25

¹² The 2016 Amendments to the MLC (which entered into force in 2019) require shipowners, companies and employers to specifically address bullying and harassment in their procedures

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specific complaints directly related to the pandemic, however it is considered that many other complaints in 2020 were partly related without COVID-19 being the focus.

As noted previously there have been well known issues in the media surrounding availability of flights, crew changes and seafarers working onboard well in excess of their maximum periods of service. Whilst there have been few of these that have resulted in actual complaints, in particular in yachting, the SM has had to regularly advise on repatriation rights particularly where there are delays. Linked to this there have been a number of complaints from crew that have been asked to delay their leave due to flight delays. It is of course important for many reasons that seafarers take their leave when available and practicable. However, provided that the crew have not exceeded the maximum continuous period of service of 11 months any leave could be postponed due to the exigencies of the vessel (and might also be to crew's benefit as much of their leave period might be taken up by quarantine). Therefore, it is possible that leave could be postponed for up to 11 months from when the seafarer last joined the vessel until the situation improves. That said it is important that leave can be used in the year it accrues where feasible. It should be noted that many Port States are taking a strict line on extended service periods and an operator should always discuss with the Flag State when this situation arises.

Other complaints arising from the pandemic resulted from the fact that in yachting there was a much shorter or no "season" in 2020 which of course led to there being less need for full crews. Some shipowners made changes to terms and conditions including furloughing, reduced wages, requiring crew to take leave at a different time (or in advance) or even unpaid leave. This led to a number of complaints from seafarers though the SM generally said such approaches are being used in many countries and industries ashore. As such as a flag we couldn't oppose this provided crew specifically agree, where necessary in an addendum to their SEA. If the seafarer refused to the reduced wages or other change in terms then they could be terminated with notice (it would certainly not be misconduct) but they must be repatriated unless already at their place of repatriation then until they return home (even if delayed by travel restrictions). They must also be paid any notice period and any accrued leave (at the original salary), in addition the shipowner must make such provision as is necessary for their relief and maintenance (including food, lodging, medical expenses) pending repatriation.

There have also been queries from crew who are at their home and are concerned about returning to the vessel and the risks from the virus. The SM indicated that if seafarers are unwilling to return to the vessel when this is an option (such as flights are available) then this could be considered a breach of contract and therefore termination without notice could be an option. However, given the global situation and that many countries were advising against all travel it would be expected that shipowners be pragmatic here but perhaps a mutual agreement to less or no notice would be appropriate.

Some crew have commented that they have been asked to take leave in a different place than their repatriation destination in their contract. The MLC says that crew have a right to take leave in their place of repatriation, however, given the myriad issues with flights and quarantine arising from the pandemic this has not always been practicable or even possible. As noted above leave can be delayed for up to 11 months since last joining however if both parties mutually agree to a different place for leave then this is acceptable though ideally everyone should be sent home at least once during the calendar year for leave.

Finally, there have been a lots of concerns raised about self-isolation and mandatory quarantine both upon return home (following termination) and when joining the vessel and whether wages and the costs of any quarantine should be paid in full. "Precautionary self-isolation" may not be considered as in the service of the ship and is at the discretion of the employer. If isolation is imposed by the employer

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prior to or on arrival at the vessel then it should be considered part of the period of service and paid accordingly. If the seafarer receives much more than 38 days leave per year then it could be considered neutral time (basic wages but no leave accrued). Where crew have to quarantine by government rules away from the place of repatriation in their SEA (either leaving or joining the vessel) this should be considered as part of the period of service and therefore paid accordingly. This is difficult to insist upon where they are actually at their agreed place of repatriation. Included in the duty pending repatriation under the law is any reasonable accommodation, food, medical and other expenses.

Example: if the seafarer's home address is the agreed repatriation destination and they can quarantine there then this is not strictly part of period of service; if they have to quarantine somewhere else (such as a hotel or quarantine facility) then this would be considered part of period of service (wages and expenses paid); if the place of repatriation is the airport nearest to home then liability ends when arriving at the airport so any quarantine is not strictly part of the period of service.

Other

As in 2019 there have been 11 complaints during 2020 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:

- Accommodation - 1
- Food - 1
- Belongings/Personal Property - 2
- Discharge Book / reference – 3
- Tips/Bonus/Gratuity – 2 (the Shipping Master cannot get involved in disputes over bonuses or gratuities unless these are contractually binding)
- Hours of Rest - 2 (as per last year's report this is slightly surprising as anecdotally this is seen as a significant issue, in particular on yachts during "the season", but only an increase of one formal complaint since 2019).

Findings from 2020

Looking at the circumstances surrounding the seafarer complaints and welfare issues reported to MACI in 2020 there are a number of conclusions that are worth noting:

- There was a very significant increase in complaints from previous years, some of this was a result of a significant number of complaints from single vessels. There was an increase from 92 in 2019 to 168 in 2019 (additionally 2019 was a marked increase on 2018). It is highly likely that much of this increase is a direct result of the COVID-19 pandemic.
- In comparison to other similar flags (including the Red Ensign Group) the Cayman Islands continue to see a very high number of complaints but it is considered that this is in part due to the fact that complaints get heard and seafarers do have options
- Very few (1%) complaints come from Merchant Ships, and very high percentage of complaints (75%) come from pleasure vessels in particular those without voluntary MLC compliance. MLC seems to continue to be working but.....

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-the complaint rate on commercial yachts is significantly higher than that for all pleasure vessels and the rate has nearly doubled in 2020 (though not in overall percentage of complaints received).
- 50% of all complaints concerned delayed or unpaid wages. This is a significant increase from 2019 where 38% of complaints involved wages. In fact given the increased numbers of complaints this year the number of wage related complaints has more than doubled from 2019. As all of these complaints are from seafarers on yachts we must consider that the COVID-19 pandemic may have had a significant impact on some yacht owners.
- Early on in the pandemic there were a lot of queries and issues regarding repatriation due to flight delays / cancellations. There was perhaps surprisingly only a small increase in the number of complaints related to repatriation (and given the increase in complaints generally a decrease in the percentage of such complaints). This may be a result of pragmatism and understanding that the situation was unprecedented from both the seafarer and shipowner / managers.
- COVID-19 quarantine requirements continue to be a source of considerable queries and complaints in particular where changes occur at short notice in particular in countries of residence. This particularly affects yacht crew many of whom reside in countries which have stricter quarantine requirements than some countries. There are also considerable costs and delays involved in obtaining clearance to fly home. As such all parties should continue to show flexibility and pragmatism here in particular with regard to taking of leave prior to reaching the maximum period of service.
- There are still a significant number of 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 for all seafarers. It should be noted that contracts benefit not only the seafarer but the persons employing them. It should also be noted, there are certain statutory obligations that apply on private yachts, such as repatriation and the requirement for medical care, and these requirements apply irrespective of the contract. Having a contract is beneficial in that all obligations are understood and this makes it easier for the SM to determine entitlements.
- Most complaints are resolved fairly successfully and rapidly once the Shipping Master becomes involved.....and often resolved when the seafarer mentions that the Shipping Master 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](#)¹³

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

Maritime Authority of the Cayman Islands.

February 2021.

¹³ <https://www.cishipping.com/policy-advice/shipping-master/contact-form-1>