

Seafarer Complaints and other welfare issues reported to MACI (2022)

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 Act.

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 Act 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 2022.

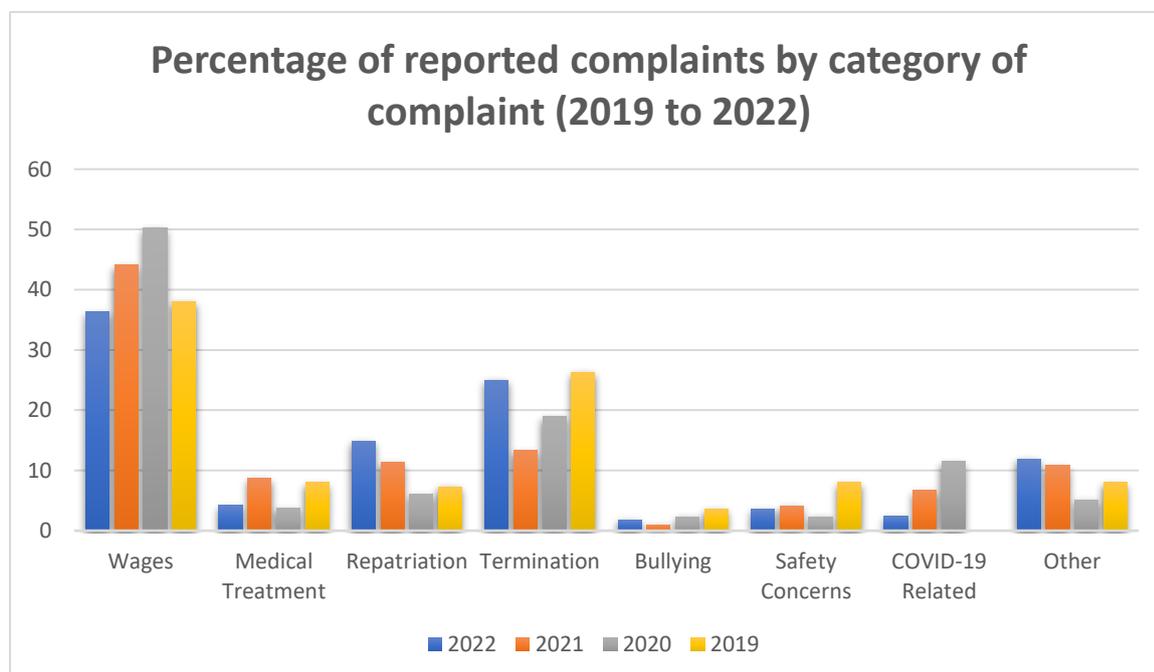
¹ See s96 of the Merchant Shipping Act (MSA) 2021 Revision

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Reported Complaints by Category of Complaint in 2022

A total of **168** complaints² were reported to MACI during 2022 a decrease of 27 compared to 2021. These can be broken down as follows –

	2022		2021		2020		2019		Change 2022 - 2021
	Num	%	Num	%	Num	%	Num	%	
Wage Disputes	61	36.3%	86	44.1%	109	50.2%	52	38.0%	-25
Medical Treatment	7	4.2%	17	8.7%	8	3.7%	11	8.0%	-10
Repatriation	25	14.9%	22	11.3%	13	6.0%	10	7.3%	+3
Termination	42	25.0%	26	13.3%	41	18.9%	36	26.3%	+16
Bullying / Harassment	3	1.8%	2	1.0%	5	2.3%	5	3.6%	+1
Safety Concerns	6	3.6%	8	4.1%	5	2.3%	11	8.0%	-2
COVID-19 Related	4	2.4%	13	6.7%	25	11.5%	n/a	n/a	-9
Other ³	20	11.9%	21	10.8%	11	5.1%	11	8.0%	-1

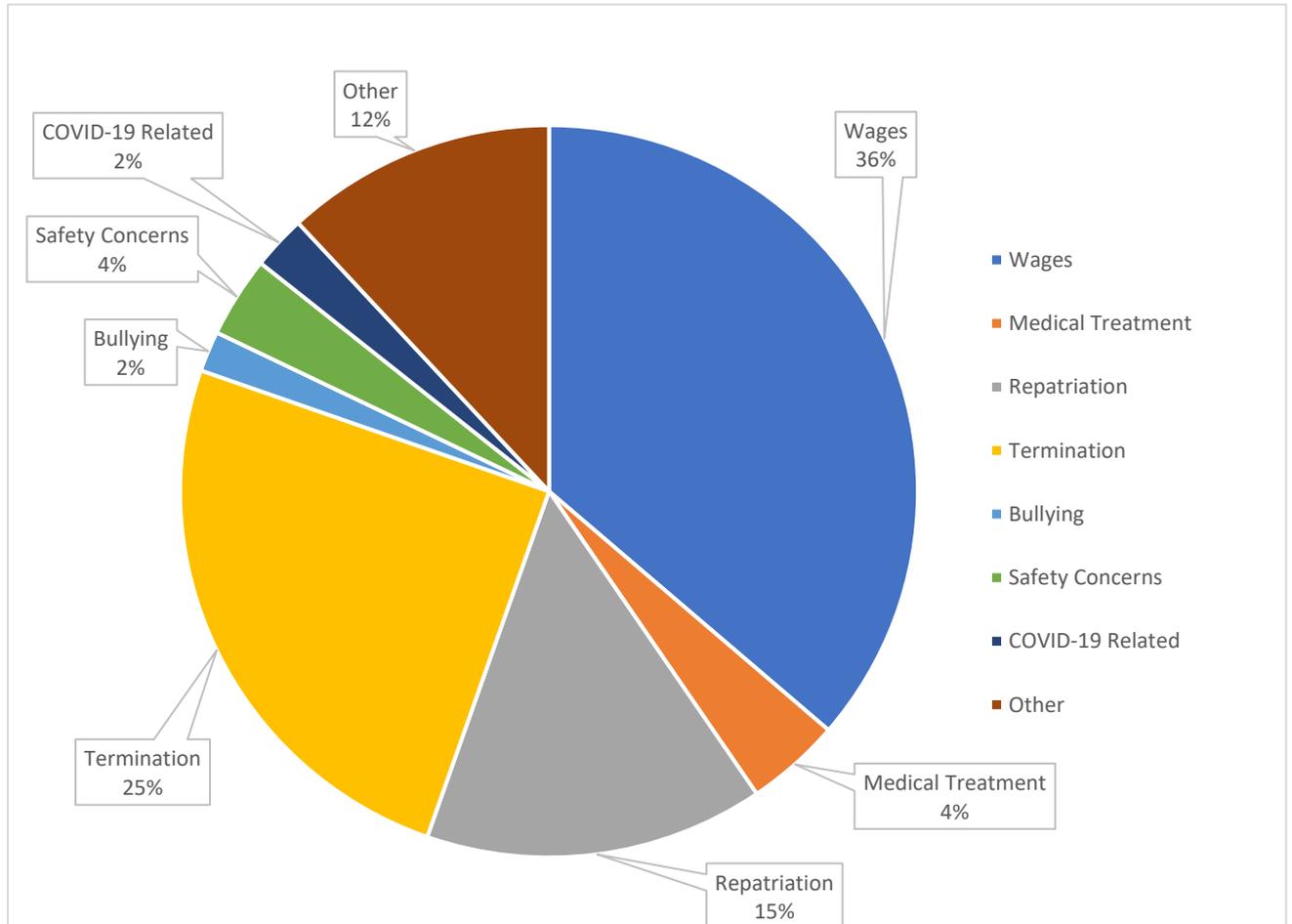


² These are 98 separate complaints as some of the complaints cover more than one listed category

³ See Categories of Complaint section

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Complaints by Category of Complaint reported during 2022

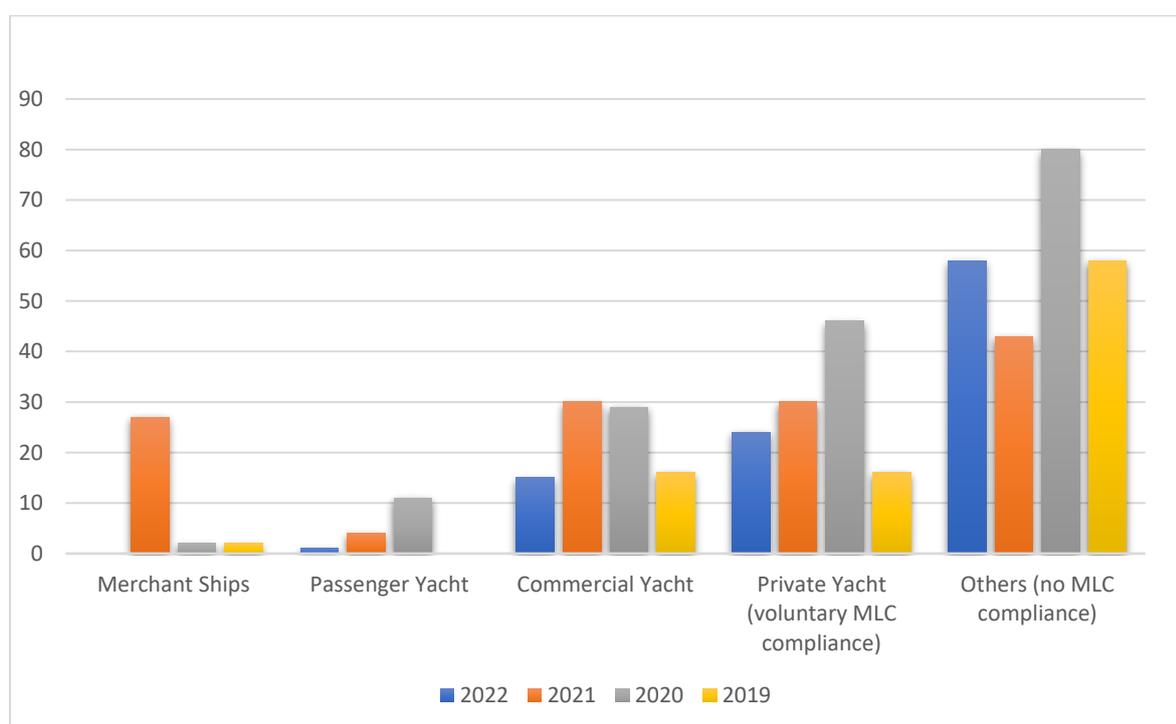


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Complaints by Vessel Registration type in 2022

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

	2022		2021		2020		2019		Change 2022 - 2021
	Num	%	Num	%	Num	%	Num	%	
Merchant Ships	0	0.0%	27	20.3%	2	1.2%	2	2.2%	-27
Passenger Yacht Code Compliant Vessels	1	1.0%	4	3.0%	11	6.5%	n/a	n/a	-3
Commercial Yachts	15	15.3%	30	21.8%	29	17.3%	16	17.4%	-15
Private Yachts (in voluntary MLC compliance) ⁵	24	24.5%	30	22.6%	46	27.4%	16	17.4%	-6
Others (pleasure vessels, etc)	58	59.2%	43	32.3%	80	47.6%	58	63.0%	+15



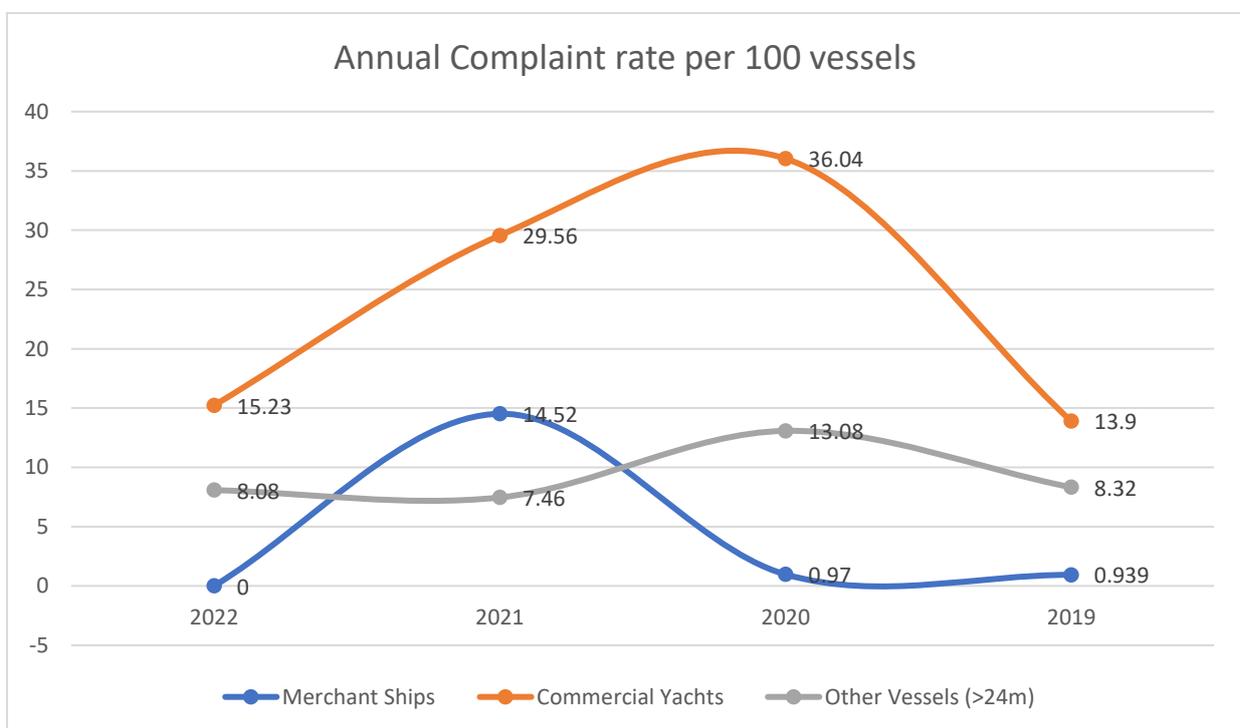
⁴ This will include some multiple category complaints (as per note 1); these may also be complaints from multiple seafarers on a single vessel (each individual seafarer complaint is recorded separately).

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.

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Complaint rate by vessel type

Ship Type:	Number of units registered	Number of complaints:	Complaint rate per ship type:	2021 Rate	Change
Merchant Ships	177	0	0 per 100 units	14.52 per 100 units	- 14.52
Commercial Yachts ⁶	105	16	15.23 per 100 units	29.56 per 100 units	- 14.33
Other Vessels ⁷	1015	82	8.08 per 100 units	7.46 per 100 units	+ 0.62



⁶ Includes Passenger Yacht Code Compliant Vessels

⁷ "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 slightly over a third of all of the complaints received by the Shipping Master (SM) in 2022. This was significant decrease both in actual numbers and in the percentage of total complaints from 2021 and 2020 but still higher than 2019 (pre pandemic).

As in previous years most 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 the majority of 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 were no requests for a formal decision regarding wages in 2021. 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 the SM to become involved. The Merchant Shipping Act for the Cayman Islands will shortly be completely revised and as part of this there will be a statutory requirement for all seafarers (including on all pleasure vessels) to have a written contract signed by both parties. Whilst this will not provide similar rights to that under the MLC it is hoped that this will ensure that many disputes can be resolved much more easily and protect both the seafarer and the shipowners' interests. We continue to strongly recommend prior to this being a statutory requirement that 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 indicates 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.

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Finally there have been a number of complaints regarding wages on vessels where there was some impact (or perceived impact) of links to Russia this has included long delays due to additional banking controls or that most (or all crew) were terminated following the start of the war and because of requirements to obtain licences to pay funds that wages were very delayed. It is very difficult to offer more than advice here unless the MLC shipowner is the ISM company (and in many cases even where it was they terminated their contract). Most if not all cases were resolved in the end through licences finally allowing payment or the banks completing their due diligence or even the owner paying directly.

Examples: A Seafarer on a rotational contract queried whether leave is earned or is simply paid in the rotational period. SM considered that the way this specific contract was worded meant that leave did not accrue and wages are simply paid each month whether onboard or not. Once more than 38 days leave had been paid in the year there is no further right. As such if the seafarer resigned no accrued leave would be due.

Medical Treatment

There were 7 complaints involving medical issues during 2022, this is a significant decrease from 17 complaints last year. As in previous years 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.

Examples: A Seafarer was injured onboard a yacht and was returned to their "home address". However this is not the agreed "repatriation address". The Seafarer had no accommodation at the "home address" unlike their "repatriation destination" and therefore incurred living expenses for medical treatment. The vessel's P&I insurer refused to cover these additional expenses. The SM said provided this destination wasn't a mutually agreed alternative repatriation destination then the expenses should be covered. The expenses were covered.

A Seafarer became ill but was initially unwilling to see a doctor. When they eventually agreed to see a paramedic the seafarer was declared fit for work but asked to leave to go ashore. The seafarer was terminated with notice as a result. The seafarer stayed ashore and visited a local doctor who signed the seafarer unfit for work and to fly but suggested overland repatriation to an alternative destination where the seafarer had relatives and could be looked after. The vessel had terminated the seafarer but seemingly did not wish to cover sick pay or (ground) repatriation to an alternative destination as

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recommended by doctor. Following involvement of the SM the company agreed to pay all relevant expenses.

Repatriation

There were 25 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). The total number of complaints increased significantly from last year, almost doubling as a percentage of total complaints.

This is 3 complaints higher than last year and much higher than 2020. Unlike the last two years the COVID-19 pandemic had far less impact on flight availability and access in general to repatriation.

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.

Examples: A Seafarer resigned providing some notice (which was not required by the contract) then decided to ask to leave before this. The vessel booked a flight at very short notice though the seafarer did not take it. The Captain insists that under the contract all repatriation flights in first 52 weeks are for the seafarer's account and the cost of this untaken flight are to be deducted from the final salary. A seafarer's Union became involved and both the Union and SM said to deduct the costs of the flight would not be legal regardless of what contract says. The SM agreed that seafarer should have made the flight but even if he or she didn't it should not have been charged. The company agreed to pay the full wages without any deduction for the flight.

A Seafarer resigned and their signed contract stated that the place of hire was the repatriation destination. The seafarer alleged that there was a separate agreement to repatriate home which the captain isn't honouring. The SM said that unless evidence to the contrary the written contract can apply.

Termination

The second most common complaint (though often alongside complaints about wages/leave pay or repatriation) in 2022 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 jurisdictions⁸. 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.

Some of this increase might be linked to the fact that large numbers of crew on some yachts, particularly non essential crew, were terminated after the start of the Ukraine war and associated

⁸ Whilst unfair dismissal is generally excluded the seafarer may be able to claim by virtue of his country of domicile

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discussion on sanctions though there were only 8 complaints directly related to sanctions in total (including multiple complaints from single vessels). Additionally it is considered that there might also have been an increase in crew changing jobs as the pandemic was no longer having a significant affect on the industry, this can often lead to complaints about how the actual termination / resignation is handled.

Fairly common complaints linked with termination continue to 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 paid⁹ 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.

Examples: Seafarers were terminated for cause following alleged breach of standing orders. They were not paid a gratuity they indicate was due. One seafarer was not paid final wages. The Shipping Master indicated unless contract guarantees a certain gratuity (or bonus) then the SM cannot be involved in claims related to this. The SM can get involved in unpaid wages and as a result it was determined there was a shortfall for one complainant which was paid.

A seafarer was terminated whilst also making a complaint about various issues onboard. The seafarer alleged a link and therefore victimisation which is expressly prohibited under MLC. The Company has denied any link. The Shipping Master passed to the enforcement team for further consideration. The case was later closed as both parties mutually agreed to the termination.

Bullying and harassment¹⁰

There have been 3 claims where bullying and/or harassment has been alleged which is 1 more than 2021 but two less than 2020 and 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.

In addition, whilst there have been no examples of this in 2022, 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 6 complaints raising safety concerns as an issue. This is a decrease from 8 in 2021 and particularly 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

⁹ 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 due the 30 days notice period.

¹⁰ 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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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 RCIPS for their consideration of whether further action is appropriate. Whilst it is difficult to take action on 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 to voluntarily comply with the Large Yacht Code, the SM can pass on the claims to the CISR survey team. They further investigate or enforcement action as deemed necessary such as noting on the file for future surveys or for an unannounced survey.

Example: A Seafarer resigned from a private yacht. The seafarer then stated that the vessel was undermanned and made a series of other allegations. Many of which are not mandatory on the vessel. The SM passed this to the enforcement team for consideration of further action.

Other

There have been 20 complaints during 2022 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”. This is similar to 2021 but remains a significant increase over 2020 (and 2019) These complaints concerned:

- Food - 2
- Belongings/Personal Property – 2
- Discharge Book / reference – 2
- Hours of Rest – 2: as per previous year’s report this is slightly surprising as anecdotally this is seen as a significant issue, in particular on yachts during “the season”.
- SEA Terms – 7: a significant increase which if continued may warrant a separate category in the future. Including where a short term captain hired under a non MLC compliant contract which provided for no notice pay. The seafarer was not actually flown to the vessel as they hired someone else. The seafarer queried if they should get notice pay. The Shipping Master considered if the actual agreed start date hadn’t applied at the point of termination then the contract would not apply.
- Tips/Bonus/Gratuity – 3: the Shipping Master cannot get involved in disputes over bonuses or gratuities unless these are contractually binding

COVID-19

2022 was the third year where the COVID 19 pandemic has continued to have an impact on the whole world not least the shipping industry continues to result in queries and complaints to the Shipping Master.

This section looks at complaints relating to the pandemic which the SM has been involved in and provides commentary on actual reported cases and outbreaks and other COVID related issues on Cayman Islands ships.

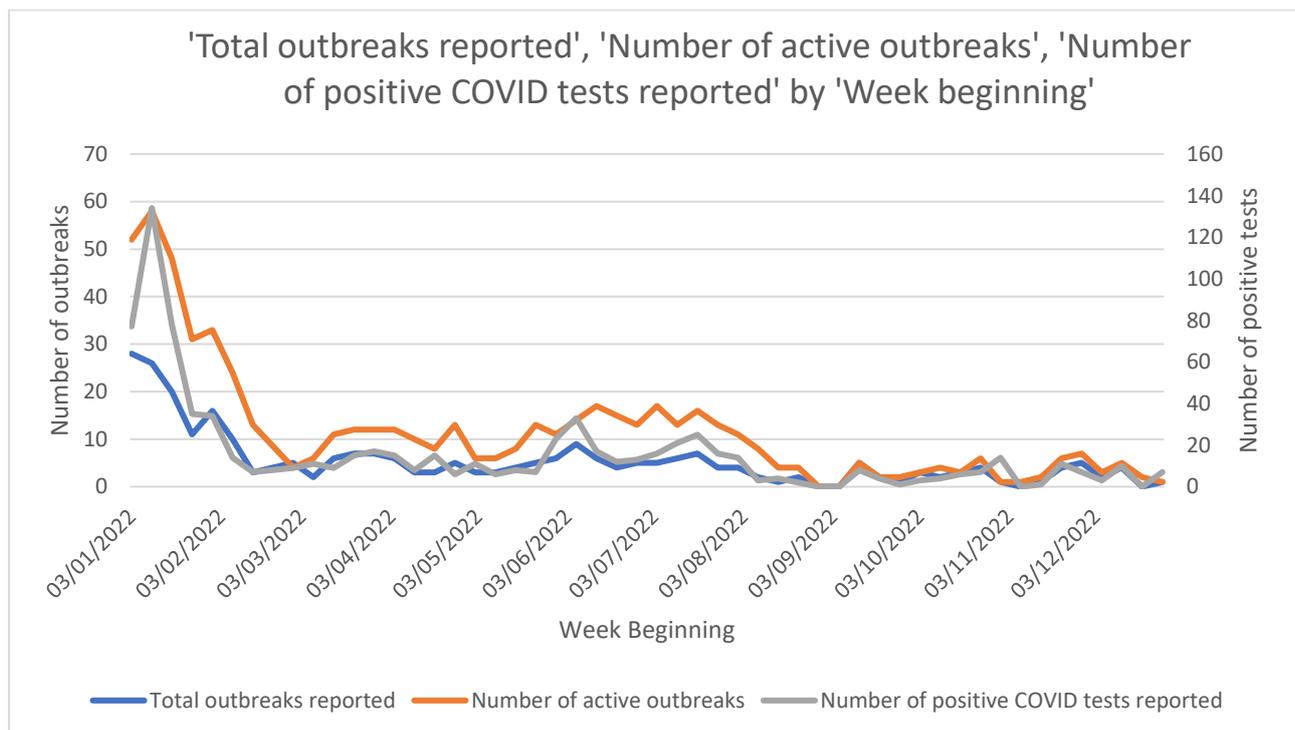
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COVID 19 is a reportable disease under the Merchant Shipping (Maritime Labour Convention) (Health and Safety) Regulations 2014 and the associated Shipping Notice 02/2015 (as amended). The Shipping Notice requires that a reportable disease is reported to MACI immediately upon diagnosis.

Once reported the SM will require further information such as whether the vessel has reported this to the local authorities where the vessel is located (if there are any). The SM also asks to be kept updated with developments including deterioration of any symptoms and whether there are further suspected or confirmed cases. The SM keeps the outbreak open until the local authorities where the vessel is located confirm that there are no positive cases and/or additional restrictions imposed. The SM records all reported outbreaks and numbers of cases.

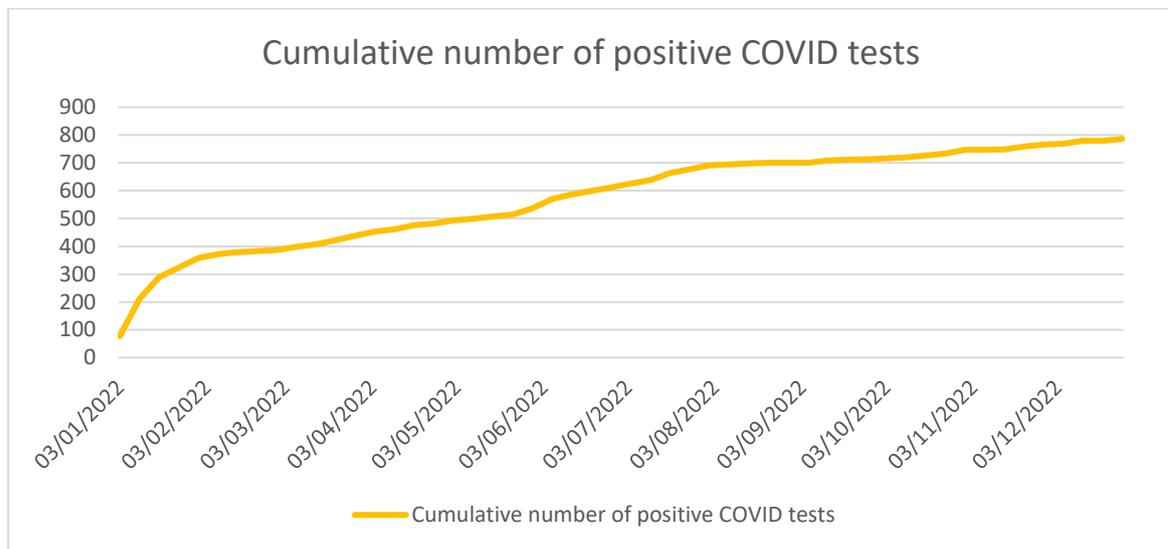
The following two graphs showing the evolving situation of COVID 19 on Cayman Islands flagged vessels and seafarers through 2022. Please note however that whilst this is an accurate report of what was reported to MACI we cannot guarantee that all cases were reported from the entire fleet.

COVID-19: outbreaks and positive cases reported to MACI in 2022



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COVID-19: Cumulative positive cases reported to MACI in 2022



The above graphs clearly show the development of the pandemic across the year. In total there have been 264 separate COVID outbreaks reported during 2022 involving 786 separate positive tests. This is an increase of 44 outbreaks and 108 cases since 2021.

In December 2021 through to February 2022 the highly infectious “Omicron” variant led to very large spikes in cases as can be seen in the red line on the first graph showing the number of active outbreaks but also in the very rapid increase in the total number of reported positive tests in the second graph. From Late February this subsided and cases stayed fairly low for much of the year with a small uptick over the summer. There has been little discernible increase through the Autumn and Winter.

COVID-19: complaints linked to the COVID-19 pandemic in 2022

There have been 4 specific complaints directly related to the pandemic which is a drop of two thirds from 2021. Aside from one complaint at the very beginning of 2021 when there were still issues relating to the “Omicron wave” these mainly related to the payment of sick pay. In previous years this has not been a significant issue but as COVID protocols across the world have relaxed it is possible that employers and doctors are not considering this a sickness that warrants sick pay in all cases.

Example: A Seafarer contracted COVID and was in quarantine for a considerable time but local doctor did not formally sign the seafarer as sick. As such company took this from the normal annual leave balance. Once the SM became involved and with a more supporting evidence the seafarer was paid in full.

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Findings from 2022

Looking at the circumstances surrounding the seafarer complaints and welfare issues reported to MACI

- There was a significant decrease in complaints from 2021 from 134 to 98, this might be a result of a significantly less multiple complaints from single vessels. Compared to 2020 this is a drop of over 40%.
- The total for 2022 (98) is now broadly similar to that in 2019 which was 92, i.e. before the COVID pandemic.
- In comparison to other similar flags (including the Red Ensign Group) the Cayman Islands continues 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.
- There have been no complaints from Merchant Ships at all in 2022. In 2021 there was a major spike particularly linked to one company, but also due to COVID issues.
- There has been a significant drop in the complaint rate (per 100 vessels) on commercial yachts which is now similar to that in 2019 after two years of significantly higher rates during the COVID pandemic.
- Unlike last year (and more in line with previous years) the percentage of complaints from pleasure vessels (those that are voluntarily MLC compliant and those that are not) is much higher at 85% of all complaints, though the overall complaint rate (per 100 vessels) from such vessels is broadly flat. There has been a very large increase (almost double) in the percentage of complaints from pleasure vessels not in voluntary compliance with MLC.
- 36% of all complaints concerned delayed or unpaid wages (decrease from 2021 where 44% involved wages). There has been a large increase in complaints relating to termination (doubling).
- As all of these complaints are from seafarers on yachts we must consider that recent sanctions and the associated issues are having a significant impact on some yacht owners or at least in the free flow of funds. Unlike previous years it appears that COVID is not having a significant impact any longer.
- Complaints about repatriation delays have further increased after doubling last year. This is somewhat surprising as this year was the first year where COVID restrictions had been broadly relaxed (or relaxing) across the world. It is plausible that given the significant increase in complaints around termination that these complaints about repatriation have gone hand-in-hand.
- There continues to be a low number of bullying and harassment allegations formally reported which may be partly attributed to the amendments to MLC which entered into force recently along with much greater awareness in the industry and society in general of these issues.
- Most complaints are resolved fairly successfully and rapidly once the Shipping Master becomes formally involved.....or often if the seafarer mentions that has raised it!

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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. This report contains comparison of reports received for 2019 to 2021. With only three years to compare, inferring any trends should be treated with caution.

“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](#)¹¹
- By telephone:** +44 1489 799 203 or +1 345 9498831.

Maritime Authority of the Cayman Islands.
February 2023.

¹¹ <https://www.cishipping.com/policy-advice/shipping-master/contact-form-1>