

## **SCR Digest 4**

The SCR committee is to issues from time to time a Digest of its decisions and views relevant to SCR's. This is the fourth.

1. Hitherto the Committees responsibility has been restricted to that set out in Appendix A of the SCOPIC Clause - the maintenance of the SCR Panel and the review of SCOPIC rates. However in February the Lloyds Salvage Group, which had overall responsibility for the content of SCOPIC and for the development of RISC's, (Respondent Interests Salvage Consultant) passed both of those responsibilities to this committee. As a result the Committee will henceforth be known as the SCOPIC Committee. The Chairmanship of the Committee will be taken over by Karen Bizon, head of the Lloyds Salvage Arbitration Branch, as from the next meeting, on a date yet to be fixed but which will probably be in October of this year.

2. The SCOPIC rates are scheduled for review this year. Work on the review has begun but is not likely to be finalised until the autumn. All SCR's will be advised when it has been completed and before any new rates come into force. Meanwhile at the request of many SCR's the list of equipment set out in Schedule A of the SCOPIC Clause has been reviewed by a committee chaired by John Noble and certain changes recommended. The Committee have approved those changes but not yet fixed appropriate rates for the new equipment listed. It has therefore been decided to publish those changes at the same time as any new rates.

3. The Lloyds Salvage Committee agreed last year, in principle, to emulate the SCR system by setting up a similar system for use in LOF cases where SCOPIC is not invoked. This system involves the creation of RISC's, who will be available in all LOF cases, if the Shipowner considers there is a need for such a representative in a particular LOF service. The precise method of achieving this and the drafting of the necessary amendment to the LOF documentation to permit it to be done, was left to a subcommittee but that sub committee never met. As mentioned above, the responsibility for this task has now been transferred to the SCOPIC Committee. The Committee will do what it can to progress this project as quickly as possible.

4. The panel of 41 SCR's has been reviewed and confirmed for another year. There were 10 applicants to join the panel and 4 have been accepted. The total on the panel is therefore currently 45.

The Committee would like to emphasise that membership of the panel is not a contract of employment and any appointment, suspension or termination, to or from the panel, at any time, are matters that are entirely at their discretion for whatever reason they deem fit.

5. It will be recalled that the following statements were made in the SCR Digest 3:-

- *“At the beginning of each calendar year all SCR’s should confirm in writing to the Salvage Arbitration Branch of Lloyd’s that they are not in the full time employment of any company or organisation that could become a party to a Lloyd’s Form Salvage Agreement or the insurers of such parties.”*
- *“The committee would be grateful if SCR’s would confirm each year (starting in 2010) that they still wish to remain on the panel and are eligible to do so.”*
- *“The Secretary has asked all SCR’s to complete a form setting out individual qualification and experience for inclusion on the Lloyd web site. So far there has been a very limited response. A copy of the form is attached and all are asked to complete and forward it to the Secretary as soon as possible. The purpose is to assist parties in selecting an appropriate SCR from the panel which will be beneficial to the SCR’s, particularly if the system is extended to cover all salvage cases (see 5 below).”*

The response to these requests has not been good. None to the first two and only 17 out of 41 to the third request. Although copies of SCR Digest were circulated to each SCR, Digest 3 was not in fact repeated on the Lloyds website (something which is now being corrected) so that may be part of the problem, but in any event the Committee would be grateful if each SCR would respond to all three issues, insofar as he has not done so already, as soon as possible. Further, it has directed me to say, any future lack of response to this or any other request, may be taken as an indication that the SCR concerned no longer wishes to remain on the panel.

6. At its meeting in March the Committee debated and agreed to the following complaint procedure:-

Any complaint should in be writing and sent to the secretary of the SCOPIC Committee, Kevin Clarke, who will then send a copy of the complaint to the person/company complained of, inviting a response. Any response will be sent to the complainer who will be given the opportunity to respond to any new point raised. Thereafter the documents will be placed before the Committee who will decide what further steps, if any, should be taken in the light of the particular complaint.

The Committee will have complete discretion as to what it should do. It may make a decision on the information before it or it may decide to call the parties before one or all of the committee, to amplify or clarify the complaint or answer or request further information or documentation. If either party is requested to attend before the Committee, or any one appointed by the Committee, both parties will be given an opportunity to attend. If amplification or clarification is needed from either party, both parties will be kept advised of both the request and the response and be given an opportunity to respond to any new point. The Committees decision will be final unless it decides an SCR should be either suspended or removed from the panel in which event he or she, should he/she so wish, will be entitled to attend before the Committee, or such other body as it may delegate, to make verbal representations. The decision of the Committee after such representations shall be final.

7. The Committee have recently had to consider the amount of time an SCR is expected to spend aboard a casualty and gives the following guidance:-

Each case needs to be judged on its own particular facts and the parties need to be flexible, but generally speaking a SCR is expected to be aboard the casualty throughout the service unless there is a particular period of inactivity, or the pressure of work elsewhere make that impossible and the parties agree, or those instructing him agree, that his involvement be reduced to just a visiting status. The aim should be to attend for a sufficient period to be able to follow what is going on, consult with the salvage master, and be able to constructively help and comment when necessary. Certainly he should be aboard during any major salvage activity or event such as a refloating. His absence should not in any way delay or restrict salvage operations.

8. The Committee have also had to consider the point of time at which dissenting reports are made and give the following guidance:-

Any dissenting report should be in writing and made as quickly as possible. One of the great benefits of the SCR system has been the ability and encouragement to address problems as and when they arise. It has undoubtedly resulted in disagreements being more quickly resolved and avoided the cost that would otherwise be involved in resolving disputes at a later date. It is for this reason that the Guidelines specifically provide that the daily written report of the salvor should either be endorsed by the SCR each day or, should he be in disagreement, be accompanied by a written dissenting report from the SCR. The point is emphasised in the various issues of the SCR Digest and for even greater emphasis is mentioned in the standard letter of appointment to any particular casualty which incorporates the following wording:-

- "If you are happy with the daily salvage report you should endorse it and transmit it to Lloyds, to the owners of the vessel, the P & I club, and to the leading hull and cargo underwriters or to their respective representatives on site.
- If you are unhappy with the daily salvage report, whether to the methodology of the plan, the utilisation of personnel, equipment, tugs or other craft, or any other aspect of the salvage service, you should first attempt to reconcile your differences with the salvage master. If this cannot be achieved you should prepare a dissenting report outlining those differences and send it with the daily salvage report to the same parties as well as to the salvage master.
- It is essential that any disagreement with the salvage master or the daily salvage report is properly recorded and communicated at the time. A failure to do so at the time and to do so clearly will make it harder to raise such points of disagreements later, in any dispute that may develop."

The guidelines do not specify precisely what should be done when the SCR arrives after the salvors have begun work and therefore not present during the mobilisation period. Clearly when he first attends aboard the ship the SCR should make full enquiry as to what has occurred before he arrived. If he is in disagreement with any part of it, he should make a dissenting report as quickly as is reasonably possible. The dissenting report should not be left until after the services have been completed. Similarly, any dissenting report on the demobilisation should be made as soon as the SCR has been made aware of the facts.

9. Recently an SCR asked for the Committees' guidance on the following:-

“... I note that paragraph 1 of the Guidelines contains the following sentence. “Although appointed by the ship owners, the SCR performs his functions under the SCOPIC clause on behalf of all parties, and their insurers.” I have always understood this to exclude the salvors (because of the inclusion of the words insurers, and the whole reason of the creation of the SCR). If I am right about this then I am justified, as SCR, in fighting the corner of the respondents. I would welcome guidance from the Committee on this point.”

The Committee responded as follows.

“It is correct to say that the SCR is employed by the respondent interests but since the inception of SCOPIC, the Committee has tried to make abundantly clear, in both the Guidelines and the various Digests issued, that the SCR is independent, is not beholden to any party, and has the duty to act in the overall interest of the salvage operation. This is best served by the constructive comment of an individual with no particular axe to grind. An SCR should always be free to express what he believes to be a correct, uninfluenced by whoever may have appointed him, and should be prepared to defend his views, once reached independently, based on all of the facts before him. To say an SCR is justified in ‘fighting the corner of the respondents’, is therefore totally incorrect, and simply encourages the wrong approach.

SCOPIC has been successful in limiting litigation and its attendant expense. To a large extent this has been due to the trust that SCR’s have built with all sides of industry who have come to accept they represent an independent unbiased viewpoint. A trust which encourages frank disclosure and discussion. That trust will be breached if SCR’s are seen or considered to be beholden to any particular party. Your independence is important to both you and the system.

10. Finally. Lars Landelius, who has served on the Committee as an advisor and SCR representative for many years has decided to retire from that post and pass the mantle of advisor to another. I take this opportunity to thank Lars for everything that he has done, and the guidance he has given to this Committee whilst on this bed of nails. It is very much a voluntary and unremunerated post and we are very appreciative of everything he has done.

The Committee understand that following consultation there are three SCR's who would be willing to take this unpaid role, Okkie Grapow, Keith Hart and Paul Glerum. All are acceptable to the Committee but before making a decision it would very much like to know which of the three SCR's would prefer. Kevin Clarke will have recently requested your views. When they are known the Committee will make a decision and advise you of the result.

Archie Bishop

Chairman of the SCOPIC Committee

12.4.10