



9 October 08

Ref: 08-006

## BSS EXAMINER NEWS

Dear Examiner,

### **BSS Examiner Consultation - Proposed changes to the BSS Examiner Code of Conduct**

I am pleased to invite your views on proposals for amending the BSS Examiner Code of Conduct.

Appendix A to this newsletter lists the proposals and outlines why the changes are necessary.

The proposed 2009/10 code incorporating the planned changes is represented in Appendix B, in order that these can be viewed alongside all other clauses.

This consultation period begins today, Thursday 9 October and you are invited to contribute your views. All responses must be received in the BSS Office by 17.00 on **Friday 2 January 2009**.

Although some of the proposed changes are of a minor nature and are intended to add clarity to the document, I would draw your attention to the following important changes.

#### a) The introduction of a clause covering examiner conduct and customer service

I have set out below the reasoning behind the proposal to introduce a clause covering examiner conduct and customer service, together with the effect of introducing such a clause.

Currently the code does not have a clause covering complaints concerning examiner conduct or customer service and so complainants have no specific route other than to write to the BSS Manager. The BSS Manager has no remedy to call upon in the event the complaint is justified.

In reviewing this position the BSS Management Committee (BSSMC) agreed with the BSS Advisory Committee (BSSAC) that complaints concerning examiner conduct or quality of service are no different in concept from complaints about application of the BSS checks and should be dealt with through a robust BSS procedure.

It is generally accepted that changes in society have led to enhanced expectations of good customer service together with an associated complaining culture. This has been reflected by the increasing proportion of formal complaints received by the BSS Office about examiner behaviour. It is also clear that the Scheme's owners British Waterways and Environment Agency place great importance on attaining high customer service standards for their staff and others who operate directly or indirectly on their behalf, including examiners.

The proposed clause is required to promote the interests of customer service and to prevent damage to the reputation of the Scheme or, by association that of individual navigation authorities. Not least the clause is needed to help in protecting examiners from vexatious or superficial allegations.

The proposed clause text as represented in Appendix A is quite general, but this is deliberate and reflects the approach of the rules or byelaws of marine surveyor bodies in their requirements for their members. The text also reflects that contained within the old Part 1 (Administration Section) of the BSS Technical Manual and the more recent BSS Customer Service Manual.

For any complaint to proceed to BSSMC for review will be dependent upon the available evidence. The likely subjective nature of the evidence will mean that any decision whether or not to place a case before the BSSMC will probably be difficult. Therefore, only extreme or persistent cases will be presented to the BSSMC for determination and cases will only reach the committee after the evidence had been reviewed by a 'filter panel' including examiner representation.

We anticipate that the development of the planned ABSE customer service protocol will provide a good measure of expected and accepted standards of conduct.

If a case reaches the BSSMC and the committee determines there has been a breach of the code, it will have the full range of remedies currently open to it, from a letter detailing the examiner's shortcomings to the permanent removal of the examiners authorisation to issue BSS certificates. This is no different to the approach concerning proven breaches of the code in respect of the technical application of the Scheme's requirements and as such, the task of the BSSMC is to choose appropriate remedies.

There are further safeguards in place and as with technical allegations, if the BSS Manager determines there is a case to answer, it is open to an examiner to challenge the conclusions from the manager's investigation at the BSSMC case review meeting; and (if the BSSMC determine a breach of the Code has occurred) to appeal any decision of BSSMC to the independent arbitrator.

#### b) The Code of Conduct is to be separated from the Investigation Procedure (BSSQA006)

In response to a BSSAC recommendation, it is proposed to separate the BSS Examiner Code of Conduct from the Investigation Procedures in the interests of clarity. The separation is hoped to remove any uncertainty for examiners about the relationship between the two documents.

The Code of Conduct will now be identified simply as the BSS Examiner Code of Conduct 2009/10, for example, running in parallel with the BSS Examiner registration year from each April.

While formal consultation with examiners on any future proposed changes to the Code of Conduct itself will continue, from now onwards changes to the investigation procedure (BSSQA006) will no longer be the subject of formal examiner consultation. Instead, the procedures will be annually reviewed by the BSSAC and agreed by the BSSMC. The investigation procedure will be made available on the forthcoming BSS examiner website and, in the event of a formal investigation into any alleged breach of the Code of Conduct; the Examiner concerned will be offered a hard copy of the Procedure at the outset of an investigation.

#### c) Comments are invited from examiners on the proposal code changes alone

Please review the proposed changes to the Code of Conduct in Appendix A. Please only comment in this consultation on those proposed changes.

If you feel you wish to comment on other aspects of the Code, the new agreed route is with your relevant representative body on the BSSAC, i.e. ABSE, or surveyor organisations IIMS, IMarEST or YDSA. This is because the BSSMC decided that a fundamental review of the Code will now happen every five years, the next being in 2011.

This move is linked to the BSSMC's associated decision that comments on matters beyond the proposed changes to the Code need not be taken account of every year.

#### d) How to Respond to this Consultation

Your views concerning on the proposed changes, in particular their reasonableness and potential impact are welcome. Comments can be made directly to the BSS Office or, alternatively through ABSE or your surveyor organisation, should you be a member. If you are making comments please remember to use the numerical reference in the first column in the table at Appendix A.

Any responses, without revealing the identity of the person making them, may be made public within a document outlining the reasons for decisions finally taken.

On the 25 November 2008 the BSSAC will discuss the nature of any initial comments received. Should you wish your comments to be taken account of by the committee please forward them before the 24 November.

The finalized Code of Conduct 2009/10 will be circulated in January/February 2009 after all views have been considered by the BSSMC. It is intended to implement it from 1 April 2009.

Just a reminder that all responses must be received in the BSS Office by 17.00 on **Friday 2 January 2009** at the latest.

Should you have any comments concerning the clarity of this consultation please let me know. Any such comments on clarity will be reviewed by an impartial person.

Printed and additional copies of this document are available from the BSS Office by contacting Tracy or Kerry on 01923 201278 or email [bss.enquiries@boatsafetyscheme.com](mailto:bss.enquiries@boatsafetyscheme.com).

Should you wish to discuss any aspect of the proposals please contact me on 01923 201390 or 07711 796417.

Best regards,

A handwritten signature in black ink that reads "G.A. Watts". The signature is written in a cursive style with a horizontal line underneath the name.

Graham Watts, **BSS Manager**

#### **Attachments**

**Appendix A Proposed Changes to the BSS Examiner Code of Conduct**

**Appendix B Consultation Draft Code of Conduct Version 2009/10**

**Proposed Changes to the BSS Examiner Code of Conduct**

This appendix forms part of BSS Examiner News 08-006 and is intended to list the proposed changes to the BSS Examiner Code of Conduct and to outline why the changes are necessary.

Proposed additions are in bold dark blue font and suggested deletions are in bold red and crossed through.

Ref.	The nature of the proposed change
General	Replace ' <del>Scheme</del> ', with ' <b>BSS</b> ' throughout the document.  <i>Comment from BW legal department for added clarity and consistency.</i>
1.1	1.1 This version of the Boat Safety Scheme (BSS) Examiner Code of Conduct replaces that dated April <del>2008</del> <del>2007</del> and all previous editions.  <i>The amendment is essential as part of an annual update.</i>
3.3	<b>3.3 Examiners in their activities connected with the BSS shall treat all persons with respect, and should ensure that they exercise the utmost care and sensitivity in all dealings with their customers.</b>  <i>New proposed 'behavioural' clause reflecting the current absence of such a clause covering examiner conduct or customer service and the fact that an increasing proportion of formal complaints received by the BSS Office are about examiner behaviour.</i>
11.2	11.2 Examiners are responsible for the safe custody <b>of the items referred to under clause 11.1 of these loan items</b> and any loss must immediately be reported to the BSS Manager. Any loss of blank BSSCs, Authentication Stamps or Examiner Identification Cards shall be reported to the appropriate police force.  <i>Comment from BW legal department for added clarity and to ensure clause stands alone.</i>
11.3	11.3 Examiners shall return all BSS items, including any unused BSSCs, documentation, Authentication Stamp, Examiner Identification Card and loaned equipment, within fourteen days of ceasing to participate in the Scheme or if requested to do so by the BSS Manager. <b>The cost of the returned unused BSSCs will be refunded to the Examiner subject to this and other conditions under this Code.</b> Where an Examiner fails to return items the BSS may take all reasonable steps to recover the items. The Examiner shall co-operate with any such recovery action and pay the costs.  <i>The amendment reflects existing practice and commits the BSS Office to refunds in appropriate circumstances.</i>

**Consultation Draft – BSS Examiner Code of Conduct Version 2009/10**

**Appendix 1  
Boat Safety Scheme  
Examiner Code of Conduct**

**BOAT SAFETY SCHEME  
EXAMINER CODE OF CONDUCT [Version 2009/10]**

**1.0 Introduction**

- 1.1 This version of the Boat Safety Scheme (BSS) Examiner Code of Conduct replaces that dated April ~~2008~~ ~~2007~~ and all previous editions.
- 1.2 This Code of Conduct regulates the activities and responsibilities of BSS Examiners (Examiners).
- 1.3 Examiners are independent practitioners authorised by the BSS to examine vessels for the purpose of determining compliance with prescribed BSS technical requirements and, where appropriate, issue BSS certificates (BSSCs).
- 1.4 For the purposes of this Code the term Examiner means any person authorised by the BSS to issue BSSCs.
- 1.5 For the purposes of this Code the term BSS Examination shall include any and all contractual activities undertaken by Examiners specifically concerning the BSS, its requirements and the issue of BSSCs.
- 1.6 As a condition of their agreement to participate in the BSS every Examiner is bound by the duties and conditions set out in this Code.
- 1.7 Examiners will also owe duties to their clients under their contracts with them or under the law of negligence.

**2.0 Examiner Duty to the Boat Safety Scheme**

- 2.1 Examiners shall have a duty to the BSS and to the participating Navigation Authorities to carry out all examinations in a competent manner using reasonable care and skill.
- 2.2 Examiners, by accepting to participate in the BSS, shall follow all the procedures, instructions and guidance issued from time to time by the BSS.

**3.0 Integrity**

- 3.1 It shall be a condition of participation in the BSS that any Examiner, when acting as such, shall uphold the BSS technical and other requirements of the BSS and the registration and/or licensing policies of the participating Navigation Authorities.
- 3.2 No Examiner shall knowingly or negligently misrepresent the BSS technical or other requirements and terms of the BSS and/or the registration and licensing policies and practices of the participating navigation authorities.

**3.3 Examiners in their activities connected with the BSS shall treat all persons with respect, and should ensure that they exercise the utmost care and sensitivity in all dealings with their customers.**

#### **4.0 Conflict of Interest**

4.1 A conflict of interest shall be presumed to exist where any circumstance arises which may impinge, or might reasonably be seen to impinge, on an Examiner's judgement. An Examiner shall not issue a BSSC in respect of a vessel where such circumstances exist. These circumstances include, but not exclusively, those listed in 4.2 below and Examiner's shall observe the requirements of 4.3 below.

4.2 In particular, an Examiner conflict of interest shall exist in respect of any vessel in which the Examiner:-

4.2.1 owns, owns in part;

or

4.2.2 is contracted to sell;

or

4.2.3 has any management or control over the vessel.

4.3 Examiners must declare and seek the guidance of the BSS Manager in any circumstance which has the potential for a conflict of interest. The Manager will advise the Examiner on the appropriate course of action which is to be followed.

4.4 Where a conflict of interest arises, in particular any of the circumstances mentioned in 4.2 above, concerning any vessel for which an Examiner has issued a BSSC that is currently in date, then that BSSC will automatically cease to have any validity and the Examiner shall forthwith return the Certificate to the BSS Manager. This requirement shall not apply where the conflict arises one year or more after the date of the issue of the BSSC.

4.5 If an Examiner carries out works to bring a vessel to compliance and also issues a BSSC for the vessel, the compliance works carried out shall be the subject of a separate contract to the arrangements under which the Examiner conducts any BSS examination of the vessel.

#### **5.0 Personal Safety**

5.1 Examiners whilst carrying out examinations shall take responsibility for their own personal health and safety and for that of any other persons working with them.

5.2 Examiners shall comply with the requirements of Health and Safety legislation in relation to the work place activities and shall conform with relevant supporting codes of working practice, including those relating to lone working etc.

5.3 Examiners and others to whom they have duties regarding health and safety must refuse to commence any examination, or bring to an immediate end any examination which has been commenced, where the circumstances expose them to danger or uncontrolled hazards.

## **6.0 Boat Safety Scheme Examinations**

- 6.1 Examiners shall not undertake any part of a BSS examination which they are not competent and eligible to perform.
- 6.2 When carrying out a BSS examination Examiners are required to carry out the prescribed BSS checking procedures and to follow the instructions and guidance, which may be issued by the BSS from time to time.
- 6.3 Examiners shall issue published safety related guidance to vessel owners as required by the BSS.
- 6.4 Examiners shall keep records of BSS examinations as required from by the BSS, including records of the issue of published safety related guidance to the owners of vessels.
- 6.5 Where, by reason of the domestic contents of a vessel or the vessel's construction or the mode of presentation, it is not possible to properly complete any of the prescribed checking procedures, Examiners shall arrange with the owner, or person in charge of the vessel to make unobstructed access available prior to completing the examination.

## **7.0 Examination of Vessels Subject to the Recreational Craft Regulations**

- 7.1 Examiners shall not issue BSSCs for a vessel when it first becomes subject to the Recreational Craft Regulations (the UK legislative enactment of the Recreational Craft Directive) except under the circumstances identified within the procedures, instructions and guidance issued by the BSS.
- 7.2 When a vessel subject to the Recreational Craft Regulations undergoes a BSS Examination it is to be examined against the current BSS Examination Checking Procedures. When any items are found to be apparently non-compliant and the owner expresses an intention to contest the fault on the grounds of the items were in place at the time the builder CE marked the vessel, Examiners must record a fault and seek the guidance of the BSS Manager.

## **8.0 Examination Administration**

- 8.1 Examinations must be recorded using BSS documentation and in accordance with the guidance notes issued by the BSS.
- 8.2 Examiners shall return to the BSS Manager any BSSCs voided through Examiner error with their immediately following BSS Monthly Return.
- 8.3 Examiners shall complete the BSS Monthly Return. Completed Returns, including any nil returns and examination documentation required to be returned, shall be forwarded to the BSS within ten working days of the end of each calendar month.

## 9.0 Quality Assurance

- 9.1 Examiners shall be required to submit themselves to periodic Quality Assurance assessment and monitoring visits, as arranged from time to time by the BSS.
- 9.2 Examiners shall be required to attend such continuation or refresher training courses as may be arranged from time to time by the BSS to update/maintain skills and knowledge. Adequate notice shall be given of such training and costs involved will be minimized.
- 9.3 Examiners shall maintain adequate records of every BSS examination to substantiate what was observed at the time of the examination in the event of any enquiry.
- 9.4 Examiners shall keep copies of BSS Examination Report forms, Status Reports, Appliance Records and BSS certificates, and such other documents as may be required by the BSS, for a period of not less than six years from the date of issue or returned to the BSS if the Examiner leaves the **BSS Scheme** before that date. Such records shall be made available by the Examiner to the BSS upon request.

## 10.0 Professional Indemnity and Public Liability Insurance

- 10.1 Examiners shall ensure that they maintain, at their own expense and at all times, valid Professional Indemnity and Public Liability Insurances.
- 10.2 The terms and level of cover of any individual Professional Indemnity and Public Liability Insurance Policy held by an Examiner shall be not less than the terms and level of cover provided by the BSS Block Professional Indemnity and Public Liability Policies or as otherwise may be specified.
- 10.3 An Examiner shall not undertake any BSS Examination nor issue any BSS certificate if, at the time of the examination or Certificate issue, they are not covered by the prescribed Professional Indemnity and Public Liability Insurances.

## 11.0 Boat Safety Scheme Property, Equipment and Unused BSSCs

- 11.1 BSS certificates, Examination Checking Procedures, Authentication Stamps and Examiner Identification Cards remain at all times the property of the Navigation Authorities participating in the **BSS Scheme**.
- 11.2 Examiners are responsible for the safe custody *of the items referred to under clause 11.1 of these loan items* and any loss must immediately be reported to the BSS Manager. Any loss of blank BSSCs, Authentication Stamps or Examiner Identification Cards shall be reported to the appropriate police force.
- 11.3 Examiners shall return all BSS items, including any unused BSSCs, documentation, Authentication Stamp, Examiner Identification Card and loaned equipment, within fourteen days of ceasing to participate in the **BSS Scheme** or if requested to do so by the BSS Manager. **The cost of the returned unused BSSCs will be refunded to the Examiner subject to this and other conditions under this Code.** Where an Examiner fails to return items the BSS may take all reasonable steps to recover the items. The Examiner shall co-operate with any such recovery action and pay the costs.



## **12.0 Fees Payable to the Boat Safety Scheme**

- 12.1 Examiners shall pay the charges for any initial or renewal invitation for registration and any other of the **BSS's Scheme's** fees and charges within thirty days of invitation or demand.
- 12.2 An Examiner shall not conduct BSS examinations or issue BSSCs unless all fees and charges due to the BSS have been paid in full.

## **13.0 Investigations of an Alleged Breach of Code of Conduct**

- 13.1 In the event of any allegation of a breach of the provisions of this Code being made against an Examiner, the BSS Manager shall make the appropriate arrangements for the allegations to be dealt with in accordance with the prescribed procedures of BSSQA006, Procedure for the Investigation of Alleged Breaches of the BSS Examiner Code of Conduct.
- 13.2 Examiners are required to co-operate as fully as the circumstances will allow with any person nominated by the BSS to carry out any investigation into an alleged breach of the duties or conditions of this Code. Examiners shall provide full, prompt information and responses as required to facilitate any investigation.
- 13.3 Where allegations of a breach of this Code may present a continuing serious risk to persons or vessels, the BSS Manager may immediately suspend an Examiner's authorization to participate in the BSS, pending full investigation of the alleged breach(es). In such circumstances the matter shall be reported to the BSS Management Committee Executive to whom the Examiner has an immediate right of appeal and the full investigation shall be completed, and the matter brought to the BSS Management Committee for resolution as soon as possible.

## **14.0 Breach of the Code of Conduct**

- 14.1 If an Examiner is found by the BSS Management Committee to have been in breach of any of the provisions of this Code of Conduct the Committee have open to them the following range of remedies:-
- a) permanent withdrawal of the Examiner's authorization to issue BSS certificates;
  - or
  - b) temporary suspension of the Examiner's authorization to issue BSS certificates, with a requirement to undertake further training and satisfactory completion of a full competence re-assessment;
  - or
  - c) temporary suspension of the Examiner's authorization to issue BSS certificates pending satisfactory completion of a full or partial competence re-assessment;
  - or
  - d) temporary suspension of the Examiners authorization to issue BSS certificates;
  - or
  - e) formal written cautioning of the Examiner with or without a requirement to give an undertaking as to their future observance of all the requirements of the BSS;

or

- f) cautioning the Examiner as to the circumstances of their particular shortcomings in the application of the **BSS's Scheme's** requirements.

## **15.0 Appeals**

- 15.1 Examiners have the right of appeal against any decision of the BSS Management Committee. This shall include a right to appeal action taken to remedy breaches of the BSS Examiner Code of Conduct. Any such appeal must be made in writing, and within fourteen days of the date of any notification of the Committee's decisions. Appeals shall be decided by an independent arbitrator appointed for the purpose by IDRS Ltd (Dispute Resolution Services). The decision of that person will be final and binding on all parties. Appellants shall bear the costs of any unsuccessful appeal process.

## **16.0 Annual Review**

- 16.1 This Code shall be subject to annual review and confirmation by the BSS Management Committee.
- 16.2 Examiners will be provided the opportunity to comment on any proposed changes to this Code.