

Surname and Initials:	Cunningham N
Statement Number:	1
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THE CRANSTON INQUIRY

WITNESS STATEMENT OF

NEIL JAMES WILLIAM CUNNINGHAM

I, Neil James William Cunningham, Assistant Director at the Maritime and Coastguard Agency ('MCA') c/o Spring Place, 105 Commercial Road, Southampton, SO15 1EG, will say as follows:-

1. I make this statement on behalf of the Maritime and Coastguard Agency ('MCA') in response to a witness evidence request from the Cranston Inquiry ('the Inquiry') dated 4 June 2025.
2. This statement is provided on behalf of the MCA and I confirm that I am duly authorised to make this statement.
3. I am currently employed as a Grade 6 Civil Servant and serve in the capacity of Assistant Director at the MCA whom I have been employed with since June 2014.

4. In this role, I am the Head of the Regulatory Compliance Investigations Team ('RCIT'), where I am responsible for overseeing investigations into matters of regulatory compliance on behalf of the MCA.
5. The Inquiry's request is in relation to enforcement action available to the MCA for failure to respond to mayday relay broadcasts, specifically addressing what enforcement options are available to the MCA to enforce the obligation on ships' masters to respond to a distress alert under Regulation 33 of SOLAS Chapter V.
6. I have understood the request to concern circumstances where there has been a presumed failure by a vessel or vessels to respond to a mayday relay broadcast.
7. To best assist the Inquiry in responding to the questions raised, I have provided background and context to the role of RCIT, its overarching enforcement policy and processes, and also specifically in relation to the enforcement of Regulation 33 of Chapter V of SOLAS, which is implemented into UK law through The Merchant Shipping (Safety of Navigation) Regulations 2020 (S.I. 2020/673).

Role of RCIT

8. The MCA is the statutory authority responsible for enforcing Merchant Shipping and associated legislation and has wide ranging powers to take enforcement action and impose sanctions for legislative breaches across the United Kingdom.
9. As the Inquiry will be aware, HM Coastguard forms part of the MCA, however it does not itself have any regulatory enforcement authority, role or responsibilities. HM Coastguard can, and does, refer potential matters of regulatory non-compliance

to RCIT. By way of example, this would include suspected breaches of International Conventions such as International Regulations for Preventing Collisions at Sea (COLREG) 1972 where vessels contravening certain regulations within our Vessel Traffic areas, such as the Dover Traffic Separate Scheme ('TSS'), are reported to RCIT as a suspected significant breach. This is not however the core function of HM Coastguard.

MCA's Enforcement Policy

10. My responsibilities include ensuring that the MCA investigates reports of suspected breaches of merchant shipping legislation and that such investigations are conducted in accordance with the MCA's Enforcement Policy. This policy requires that any enforcement action, including investigations, must be lawful, justified, proportionate and necessary. A copy of the MCA's Enforcement Policy is included at **Annex A** of this witness statement.

11. All reports of suspected regulatory breaches are subject to initial assessments by the MCA's RCIT team which are recorded on a case management system. "THRIVE" assessments are thereafter typically used by RCIT on all reported incidents.

THRIVE is a structured model used by UK law enforcement to assess:

- **Threat** – The nature and immediacy of any threat present.
- **Harm** – The actual or potential harm to individuals or the public.
- **Risk** – The likelihood of escalation or further incidents.
- **Investigation** – The necessity and scope of any investigative actions.

- **Vulnerability** – Any vulnerabilities of those involved, including safeguarding concerns.
- **Engagement** – The level of engagement required with the public or partner agencies.

12. This formal written assessment informs the operational response and ensures that appropriate resources and safeguarding measures are considered. Where a matter is deemed to constitute a ‘Significant Breach’, a formal investigation is initiated through a Gateway Referral Process (‘GRP’) in accordance with established regulatory enforcement standards.

13. A Significant Breach is defined as a contravention of legislation relating to ships, watercraft, seafarers, or other water users which has, or has the potential to cause:

- Loss of life
- Serious injury
- Significant pollution
- Damage to property or the environment

14. It also includes any act that prevents an MCA officer from carrying out their statutory functions.

15. RCIT consider the following factors when deciding whether to instigate a formal investigation:

- a. Is the MCA the relevant authority to investigate, i.e. does the matter fall within byelaws or harbour and local authority directions? Significant Breaches where there is a broader threat to safety on UK waters are ordinarily investigated and prosecuted by the MCA.
- b. Does the suspected Significant Breach involve a UK flagged vessel, i.e. registered in England, Scotland, Wales, or Northern Ireland? The Common Law jurisdiction of the Admiralty extends to all indictable offences committed on or by UK flagged ships, wherever they might be committed and whether the offences are committed by UK citizens, foreign nationals, or corporate entities.
- c. Does the suspected Significant Breach involve a non-UK flagged vessel? If it is a non-UK flagged vessel, has the incident occurred within the 12 nautical mile limit (UK territorial sea)?
- d. Has the suspected Significant Breach occurred in the Exclusive Economic Zone (EEZ: 12–200 nautical miles from the coast)? If so, the UK has no distinct criminal prescription or enforcement jurisdiction over its EEZ for non-UK flagged vessels.

16. This process includes full compliance with the Criminal Procedure and Investigations Act 1996 ('CPIA'), ensuring that all reasonable lines of enquiry are pursued and that all relevant material is appropriately recorded, retained and reviewed for disclosure purposes.

17. A decision to conclude an investigation is only taken once it has been determined that all investigative avenues have been exhausted, and no further evidential or regulatory value can be obtained.

18. Outcomes may include closure with no further action, the application of proportionate enforcement measures such as a notice of concern, detention notice, improvement notice, prohibition notice, caution or, where warranted, referral for prosecution.

19. Prosecution is regarded as the ultimate sanction and is pursued only in cases where the seriousness of the breach, the strength of the evidence, and the public interest justify such action. All decisions are made in line with this proportionate and graded enforcement approach.

Regulation 33 of Chapter V of SOLAS

20. My role also includes ensuring that the United Kingdom meets its international enforcement obligations under maritime safety conventions, including the International Convention for the Safety of Life at Sea 1974 ('SOLAS').

21. I oversee the enforcement of Regulation 33 of Chapter V of SOLAS, which is implemented into UK law through The Merchant Shipping (Safety of Navigation) Regulations 2020 (S.I. 2020/673).

22. Regulation 33 of SOLAS Chapter V deals with distress situations: obligations and procedures. The MCA's Marine Guidance Note (MGN 610 (M+F) Amendment 1 navigation: SOLAS chapter V – guidance on the merchant shipping (safety of navigation) regulations 2020)), provides clarification and guidance on the Merchant Shipping (Safety of Navigation) Regulations 2020 (S.I. 2020/0673), which implement Chapter V of the International Convention for the Safety of Life at Sea, 1974 (SOLAS) in its most recently amended form into UK law.

23. It sets out:

- a. *This regulation applies to all ships and places an obligation on masters to respond to information from any source that persons are in distress at sea. Included is the obligation for rescued persons to be delivered to a place of safety and their humane treatment when on board the rescue ship. A “distress alert” means a signal of distress from a ship or information from any source that a ship or hovercraft is, or persons on or from a ship or hovercraft, are in distress at sea;*
- b. *Further information is contained in IMO Resolution MSC.167(78) Guidelines on the treatment of persons rescued at sea.*
- c. *Reference should be made to Volume 3 of the International Aeronautical and Maritime Search and Rescue (IAMSAR) manual adopted in 2000 by IMO Resolution A.894(21) which is required to be carried on board all ships as per regulation 21 - International Code of Signals and IAMSAR Manual.*

- d. *Masters who, in special circumstances, decide not to respond to a distress must enter their reasons in the logbook and, if they have responded to the distress, inform the appropriate search and rescue authorities of their decision not to proceed.*
- e. *A master of a ship in distress, or the search and rescue services concerned, may requisition a ship in the circumstances set out in paragraph 2 of regulation 33 (distress situations: obligations and procedures).*
- f. *A master is released from a duty imposed in—*
 - *paragraph 1 of regulation 33 (distress situations: obligations and procedures) in the circumstances set out in paragraph 3 of regulation 33; and*
 - *paragraph 1 or 2 (as the case may be) of that regulation in the circumstances set out in paragraph 4 of that regulation.*
- g. *Compliance by the master of a ship with the requirements of regulation 33 (distress situations: obligations and procedures) does not affect their right, or the right of any other person, to salvage.*

24. Paragraph 1 of Regulation 33 of SOLAS poses a legal duty on shipmasters to proceed with all speed to assist persons in distress at sea, unless they are unable to do so, or it would be unreasonable: “*The master of a ship at sea which is in a*

position to be able to provide assistance on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so. If the ship receiving the distress alert is unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance, the master must enter in the log-book the reason for failing to proceed to the assistance of the persons in distress, taking into account the recommendation of the Organization, to inform the appropriate search and rescue service accordingly.”

25. A mayday or mayday relay is an example of how a distress may be signposted, the duty is to respond to any information from any source that a person is in distress.
26. This obligation applies to all UK-flagged vessels globally and all vessels within UK territorial waters (up to 12 nautical miles), regardless of flag.
27. For the avoidance of any confusion in the context of the Inquiry's terms of reference, the MCA has no regulatory enforcement powers in respect of foreign flagged vessels in French territorial waters, or foreign military or other non-commercial foreign government vessels generally.
28. Failure to comply with these obligations constitutes an offence under UK law. Penalties may include imprisonment for up to two years, an unlimited fine, and/or detention of the vessel.

29. To establish a breach of Regulation 33, the following elements must typically be proven:

- a. Evidence of persons in distress at sea (e.g., distress signals, radio communications, eyewitness accounts).
- b. Proof that the ship's master received information about the distress situation.
- c. Demonstration that the ship did not proceed to assist or unreasonably delayed or refused assistance.
- d. Absence of a valid reason for non-compliance (e.g., safety of the ship or crew, overriding operational constraints).
- e. Confirmation that the vessel was either UK-flagged or within UK territorial waters at the time of the incident.

30. An instance of such a potential breach would arise where a vessel, having been identified as capable of rendering assistance and having received a specific request to do so, fails to comply without a substantiated and lawful justification.

31. Supporting evidence in such cases may include, for example, voyage data recorder ('VDR') logs, AIS tracking, radio logs, crew statements, and Search and Rescue ('SAR') coordination records.

32. There are however a number of practical and evidential challenges associated with investigation and/or enforcement action in respect of potential breaches of Regulation 33 of SOLAS. These include, but are not limited to:

- a. Proving that the master(s) of the vessel(s) received information about the distress situation
- b. Identification, tracing and cooperation of the master(s) of the vessel(s) and crew, particularly in situations where (as is frequently the case in the Channel), vessels are passing through and not calling in to a UK port
- c. Identification of the vessel(s) which are alleged to have failed to respond to a distress message and the potential / scope for this to involve a large number of vessels
- d. Proving and evidencing the action(s) or inaction(s) a master of a vessel may have taken in response to a distress message
- e. Applicability and interpretation of when a vessel is considered to be 'unable', or it is 'unreasonable' or 'unnecessary', for it to respond to a distress message. This can be fact and circumstance specific. Relevant factors here may include, the location of the vessel receiving the message, the size / nature of that vessel, the course of the vessel, the weather / sea conditions, the size / nature / circumstances of the vessel in distress.
- f. The reliance on Mutual Legal Assistance Treaties ('MLAT') as a method of cooperation between states for obtaining assistance in the investigation or prosecution of criminal offences where, for example, a master of a vessel is a foreign national and does not reside in the UK.

- g. The limitations of the MCA's investigation and enforcement powers in that it does not have the power of arrest

33. All of the above provide real challenges in the MCA being able to reach the necessary evidential burden of proof, which is required to be to a criminal standard. This means that investigation of and enforcement action taken in respect of a non-compliance with Regulation 33 is extremely rare. No prosecutions have been brought in the past 5 years since 2021 for non-compliance with Regulation 33, and no referrals for any potential non-compliance with Regulation 33 have been made by HM Coastguard to RCIT during this time period.

Commercial Vessels in the TSS

34. Specifically looking at commercial vessels in the Traffic Separation Scheme ('TSS'), there are limitations as to what such a vessel can do in response to a distress broadcast without causing serious safety risks to other vessels in the area. For example, a change in course and/or speed could endanger other vessels and getting too close in proximity to a smaller vessel has a significant likelihood of overwhelming / swamping it.

35. It would be expected for each vessel's master to take into consideration the nature of the distress call and whether their vessel can offer assistance. An investigation would consider reasonable defences as mitigating circumstance or a blatant failure to act responsibly and safely as potential aggravating factors. These would be considered on a case by case basis.

Referrals

36. RCIT have not received any referrals for investigations associated with any suspected failure by a vessel or vessels to respond to a distress message in the Channel on 24 November 2021.

37. Without a specific vessel or vessels and specific potential non-compliance being highlighted, I am unable to comment on this any further.

38. Since the publication on 27th October 2023 of the recommendation to remind staff to notify RCIT when vessels nearby to a distress position do not respond to a mayday relay broadcast, RCIT have not received any referrals for investigations associated with any potential breach of Regulation 33 of SOLAS.

39. Once any referral is received, it is assessed on its own individual circumstances or merits.

Statement of Truth

I believe the content of this statement to be true.

Signed: *NJW Cunningham*

Dated: 15/07/2025

ANNEX A

MCA ENFORCEMENT POLICY STATEMENT

1. Background

1.1 The Maritime & Coastguard Agency ("MCA") is an Executive Agency of the Department of Transport. It is the statutory authority responsible for enforcing Merchant Shipping and associated legislation and has wide ranging powers to take enforcement action and impose sanctions which reflect the seriousness of the legislative breach across the United Kingdom.

1.2 Whilst enforcement action typically follows breaches of the Merchant Shipping Act 1995, there are a number of laws and regulations that the MCA enforces.

1.3 The MCA has the power to take enforcement action against a variety of potential defendants, including ship / vessel / watercraft owners (whether they be individuals or corporate entities), masters, seamen, officers and in some circumstances, ship / vessel / watercraft managers and charterers. In certain circumstances, enforcement action may also be taken against the officers of corporate entities, for example, directors.

1.4 The MCA has dedicated Departmental Inspectors who are individuals appointed by the Secretary of State under s.256(1) of the Merchant Shipping Act 1995.

1.5 The purpose of this policy statement is to outline the MCA's approach to enforcement. Understandably, some criminal offences will fall outside of the MCA's remit and may be investigated by other enforcing agencies, such as the Police or other Government departments. The MCA is committed to assisting other enforcement agencies and is a signatory to the Convention between Prosecuting Authorities and the Work-Related Deaths Protocol.

1.6 Whilst prosecution remains the most serious enforcement action that the MCA can take, the MCA has a range of administrative sanctions available that may be considered before a prosecution is initiated. Please note that once criminal proceedings in the Court are commenced, control over the sanction-imposed rests with the Court.

2. The Regulatory Compliance Investigations Team, Operational Procedures

2.1 MCA's Regulatory Compliance Investigations Team ("RCIT") are responsible for investigating suspected breaches of maritime legislation that may impact on the safety and security of individuals, vessels, and the environment. The RCIT also investigates instances of persistent non-compliance with statutory requirements and incidents considered to be in the public interest to investigate. A 'significant breach' will prompt a criminal investigation that may result in criminal proceedings.

2.2 The MCA considers a 'significant breach' to be a:

2.2.1 contravention of legislation appertaining to ships, watercraft, seafarers, or other water users, which has, or has the potential to cause, loss of life, serious injury, significant pollution or damage to property or the environment; or

2.2.2 an act which prevents an officer of the MCA from carrying out their statutory functions.

2.3 The MCA takes a risk-based approach to regulatory activity, with all potential breaches reported subject to a THRIVE risk assessment, to assess Threat, Harm, Risk, Investigation, Vulnerability and Engagement. This process is to ensure the investigation of breaches that pose the greatest risk are appropriately prioritised. Incidents that do not meet the criteria of a significant breach, may still be investigated where appropriate. RCIT consider all cases reported and actively monitor open-source social media to ensure that investigative time and resources are allocated effectively.

2.4 Upon completion of an investigation, evidence is analysed by the MCA Departmental Inspector and a recommendation is made. This can include a recommendation that the MCA ought to prosecute the offender.

2.5 To ensure a fair decision-making process, the decision to prosecute is taken independently of the investigator (“Phillips Principle”). It allows for a careful, impartial assessment of the Departmental Inspector’s recommendation, which ensures that a justified and appropriate course of action can be taken.

2.6 The final decision to initiate criminal proceedings is with MCA’s Chief Executive Officer or an Executive Director with the appropriate delegation.

2.7 Although not subject to the Attorney General's direct managerial control, MCA prosecution activity is subject to the Attorney's General's oversight.

2.8 MCA will seek to recover reasonable costs incurred in investigation and enforcement proceedings from those who have breached the law. The MCA will also utilise its powers under the Proceeds of Crime Act 2002 where possible.

3. Principles when investigating.

3.1 When investigating, the following basic principles are applied. In applying these principles, the MCA aims to achieve a fair investigative process, which results in justified and proportionate enforcement action.

3.1.1 Every case is assessed on its own merits.

3.1.2 MCA Departmental Inspectors take on each case with a fair and balanced approach.

3.1.3 Every reasonable effort is made to gather all the available evidence and all reasonable lines of enquiry are followed to prove or disprove any persons suspected involvement in criminal activity.

3.1.4 MCA Departmental Inspectors and those assisting adhere to rules governing the conduct of investigations, including in respect of human rights.

3.1.5 Where appropriate, suspects are invited to give their own account of an incident in a PACE interview (or Scottish equivalent) with the right to legal representation.

3.1.6 All recommendations are evidenced based, with consideration of any mitigating factors.

3.1.7 No case shall proceed to prosecution without the knowledge and approval of senior individuals within the RCIT / MCA.

4. Offences

4.1 Typically, offences can be broadly sub-divided into the following categories:

4.1.1 Pollution.

4.1.2 Collision regulations (IRPCS).

4.1.3 Unsafe operations – owners, operators, and users.

4.1.4 Conduct endangering – masters and crew.

4.1.5 Carriage of dangerous goods; and

4.1.6 Fraud – seafarer documentation.

5. The principles of enforcement

5.1 The MCA applies the following principles when conducting enforcement activity:

5.1.1 Transparency – MCA will make clear to those we regulate the requirements to remain compliant and our approach to enforcement of those regulations as detailed within this policy.

5.1.2 Accountability – MCA takes responsibility for the enforcement action that it takes and will explain the decisions taken where appropriate.

5.1.3 Proportionality – MCA will ensure that enforcement action is proportionate to the risks posed by the non-compliance and the seriousness of the breach.

5.1.4 Consistency – MCA aims to be consistent in the advice it provides and enforcement action taken.

5.1.5 Intelligence led Enforcement – MCA utilises a risk-based approach, with resources prioritised to take efficient and effective action in the cases that pose the greatest risks.

6. Administrative sanctions

6.1 The administrative sanctions available to the MCA include:

6.1.1 Inspection and Follow Up – Where there has been a fatality, serious injury, serious damage to a vessel, major mechanical breakdown or sinking, the MCA will endeavour to either conduct an inspection of the vessel or follow up on the incident. The extent of the inspection / follow up will depend on the nature of the incident. Inspection will take priority over routine survey and inspection work. The purpose of an inspection is to ensure that the vessel complies with the relevant standards and to ensure that working practices relevant to the circumstances of the accident were adequate and were consistent with existing rules. An assessment shall be made as to whether the vessel can return to use or be allowed to sail to a suitable repair port as necessary.

6.1.2 Prohibition / Improvement Notices – Such notices compel the person responsible for an activity to either take steps to make an activity safe (improvement) or in more extreme circumstances, stop the activity from taking place (prohibition). Breaking the terms of a notice is an offence under the Merchant Shipping act.

6.1.3 Detention – The MCA has the power to detain vessels in certain circumstances. Typically, detention may be considered for pollution offences or for

safety reasons, for example, to make repairs regarding seaworthiness, or to remedy deficiencies in the equipment or manning of a ship.

6.1.4 Notification of Concern ("NOC") – In certain circumstances, MCA Departmental Inspectors may suspect that someone is or has been operating in breach of Merchant Shipping legislation, but there may be insufficient evidence to warrant a prosecution or caution. Where a 'no further action' recommendation is not warranted, the MCA may write a letter to the individual or company outlining their concerns. A NOC does not carry legal status but serves as a warning that the operation in question has been brought to the attention of the MCA and investigated.

6.1.5 Simple Caution – Whilst simple cautions are available for any offence, they are primarily intended for low-level, mainly first time, offending. The more serious an offence, the less likely it is that a simple caution will be appropriate. A caution will only be considered in circumstances where the MCA could bring a prosecution and the offender admits the offence and consents to the caution. A record of the caution will be retained by the MCA and produced in Court should the offender later be found guilty of a further offence. A previous caution may also influence the MCA's decision to prosecute in the future.

6.1.6 Inquiry into Fitness to hold a Certificate of Competency – As an alternative to, or because of, a prosecution, the MCA may conduct an inquiry into the fitness of an officer to discharge their duties by reason of incompetence, misconduct, or negligence. The consequences for the officer of any withdrawal of certification, even temporarily, can be very serious. The MCA also has powers to conduct a similar inquiry concerning the fitness or conduct of other seafarers.

7. The decision to prosecute.

7.1 Before initiating a prosecution, the MCA will consider whether the case meets the Full Code Test set out in the Code for Crown Prosecutors (the "Code"). The MCA must be satisfied that there is a realistic prospect of conviction and that the evidence is reliable and credible.

7.2 The Full Code Test consists of two stages (the evidential test, followed by the public interest stage) and will be applied once all outstanding reasonable lines of inquiry have been pursued, or once the MCA is satisfied that any further evidence or material is unlikely to affect the application of the test, whether in favour of or against a prosecution.

The evidential stage

7.2.1 The MCA must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. This is based on an objective assessment of the evidence and will require the MCA to consider the admissibility, reliability, and credibility of the evidence. The MCA will also consider whether there is other material that might affect the sufficiency of the evidence.

The public interest stage.

7.2.2 If there is sufficient evidence to provide a realistic prospect of conviction, the MCA will consider whether a prosecution is required in the public interest. In reaching its decision, the MCA will consider the questions set out within the Code, namely:

- 7.2.2.1 How serious was the offence?
- 7.2.2.2 What was the level of culpability of the suspect?
- 7.2.2.3 What were the circumstances of, and the harm caused to the victim?
- 7.2.2.4 What was the suspect's age and maturity at the time of the offence?
- 7.2.2.5 What was the impact on the community?
- 7.2.2.6 Is prosecution a proportionate response?
- 7.2.2.7 Do sources of information require protecting?

7.3 MCA endeavours to ensure a consistent and proportionate approach, with each case assessed on its individual merits. To that end, before an MCA Departmental Inspector recommends prosecution as a proportionate enforcement response, they must have carefully considered the evidence and any mitigating circumstances.

7.4 MCA will, where permitted, publish details of concluded prosecutions in its online annual report.

8. Review

8.1 MCA's enforcement policy may be updated as required to reflect any changes and is subject to an annual review by MCA's Executive team.