Foreword by the Chief Minister

This is the Report of the Council of Ministers into the complaint of Mr and Mrs Dante Spadoni to be laid before the October 2008 sitting of Tynwald. My predecessor, the former Chief Minister Mr Donald Gelling, CBE, CP established a Sub Committee of the Council of Ministers to independently consider a Petition regarding the complaint of Mr and Mrs Spadoni.

The Sub Committee of Council of Ministers was chaired by Mrs Clare Christian MLC and comprised Hon David Anderson MHK and Captain Andrew Douglas. The Sub Committee undertook to hear evidence, make enquiries and report back to Council on Mr and Mrs Spadoni’s complaint. The Sub Committee has undertaken a great deal of work with support from Officers in Chief Secretary’s Office.

I extend my thanks to the members of the Sub Committee and the Officers for the clear and comprehensive Report.

Hon J A Brown MHK  
Chief Minister
REPORT OF THE COUNCIL OF MINISTERS

SUB-COMMITTEE INTO THE COMPLAINT OF

MR AND MRS SPADONI

September 2008
REPORT OF THE COUNCIL OF MINISTERS

SUB-COMMITTEE INTO THE COMPLAINT OF

MR AND MRS SPADONI

The Council of Ministers Sub-Committee set up to consider the Petition of Mr and Mrs Dante Spadoni respectfully submits its report for consideration.

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Mrs C M Christian MLC (Chair)

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Hon D M Anderson MHK

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Capt A Douglas
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### Annexes

- **Annex 1**: Committee Meeting Dates and people called to give evidence
- **Annex 2**: The Petition
- **Annex 3**: A Short History of the Petition
- **Annex 4**: List of all evidence submitted to the Committee
- **Annex 5**: Copies of documental evidence referred to in the Report
- **Annex 6**: Explanation of Full Inclining Test; Full Stability Test; Roll Period Test
- **Annex 7**: Hansard from Tynwald Sitting on 19 November 2003
1. Introduction

1.1. In June 2006 the Chief Minister of the day, Hon D J Gelling CBE, CP, set up a Sub-Committee to independently assess a Petition submitted by Mr and Mrs Dante Spadoni. It should be noted at the outset that the Petition had not been picked up by a Member of Tynwald and the then Chief Minister, mindful of the fact that the Spadoni’s by that time had reached an accepted resolution with the UK MCA, wished the Committee to consider the complaint of the Petitioners as follows:

“Wherefore your Petitioners seek that Tynwald either appoints a Select Committee, or resolves to hold an Inquiry under the Inquiries and Evidence Act, to investigate the Department of Trade and Industry”.

1.2. The Committee was established with the following remit:-

That the Committee hear evidence, make enquires and report back to the Council of Ministers.

1.3. The membership of the Committee is as follows -

Mrs C M Christian MLC, Chair
Mr D M Anderson MHK
Captain A C Douglas

Meeting dates of the Committee and those persons called to give oral evidence can be found at Annex 1.

1.4. The purpose of this Report is to undertake an assessment of the Petition submitted by Mr and Mrs Spadoni. A full copy of the Petition can be found at Annex 2 and a short history of the consideration of the Petition by Tynwald and the Council of Ministers can be found at Annex 3.

1.5. The Petition summarised the events following the purchase of the Suzanna D (which was a UK registered fishing vessel) by Mr and Mrs Spadoni who wished to transfer the vessel to the Manx Fishing Register.

1.6. The Petition outlined the involvement of the Isle of Man Marine Administration of the Department of Trade and Industry who appointed the United Kingdom Maritime and Coastguard Agency to act as their Agent to carry out a survey on the Suzanna D.

1.7. The Committee has undertaken considerable research into the evidence submitted by all parties. The evidence presented to and considered by the Committee was made up by numerous letters, faxes, notes of meetings and personal statements of evidence. A total of 11 oral statements were made by persons attending Meetings of the Committee listed in Annex 1. There were over 450 accounts of documental evidence a list of which can be found at Annex 4. All documents referred to in this Report can be found at Annex 5. To arrange to view the original documental evidence please telephone the Chief Secretary’s Office on 01624 685037.
1.8. For ease of reference the Committee has set out the Key Milestones in the history of this matter in Section 2 of the Report.

1.9. This report represents the findings, conclusions and recommendations of the Committee for consideration by the Council of Ministers.

1.10. Throughout this document Mr and Mrs Spadoni are referred to as the Petitioners.

1.11. The following abbreviations are referred to in the Report -

The MA means the Isle of Man Marine Administration (recently renamed the Isle of Man Ship Registry) which is responsible for the registration of ships and yachts and the technical regulation of, and jurisdiction over, those vessels on the Manx Register.

The MCA means the United Kingdom Maritime and Coastguard Agency which is responsible throughout the UK for implementing the UK Government's maritime safety policy.

1.12. The MA, MCA, the Petitioners and other bodies and persons use the terms full stability test, full inclining test; roll test and roll period test in letters, statements and faxes. An explanation of these terms is provided at Annex 6, however it would appear to the Committee that the terms full stability test and full inclining test have been used by the different bodies to describe the same process.
<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>1999</td>
<td>March: The Petitioners bought the Suzanna D with the appropriate Fishing Vessel Safety Certificate (FVSC) issued by the Maritime and Coastguard Agency (MCA) and valid for a further two years.</td>
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<td>10 January: Following completion of the survey work the MCA issued a letter of satisfaction to the MA enclosing the relevant paperwork.</td>
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<td>2000</td>
<td>10 January: MCA wrote to the Petitioner’s Bank (Barclays) accepting no liability but accepting they have responsibility to ensure the Petitioners are compensated for losses incurred as a consequence of advice tendered by MCA.</td>
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<td>19 November 2003: Main Debate in Tynwald regarding the Suzanna D and the Petitioners.</td>
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<td>2001</td>
<td>25 January: MA expressed concern with regard to the marginal results contained within the Roll Period Stability Test and requested further information from the MCA.</td>
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<td>9 March: MCA, MA and the Petitioners met to discuss the MCA’s offer to rectify any problems with the vessel.</td>
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<td>27 July 2004: Following mediation between MCA and the Petitioners a settlement was eventually agreed between the Petitioners and MCA.</td>
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<td>28 January: The Principal Fishing Vessel Surveyor from the MCA advised the MA that the vessel would be acceptable to the MCA given the results of the Roll Test.</td>
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<tr>
<td>2003/2004</td>
<td>30 May: Letter from Petitioner’s advocate to MCA advising that the proposals to modify vessel are unacceptable and seeking financial compensation.</td>
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<td>19 June: Letter from MCA to the Petitioners stating that they remain committed to resolving the matter.</td>
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<td></td>
<td>8 February: MA then issued a full term certificate restricting the period of validity of the certificate.</td>
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<td>26 September: Letter from MCA to the Petitioners again offering to compensate loss and rectify problems with vessel.</td>
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<tr>
<td></td>
<td>11 April: MA wrote to the Petitioner’s legal representatives informing them of the possible withdrawal of the certificate following receipt of the file from the UKMCA. MA requested a roll test be carried out within 1 month.</td>
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<tr>
<td></td>
<td>2 December: Letter from Petitioner’s advocate advising that they are not accepting the offer from MCA.</td>
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<td>26 April: The tests were conducted by Marine Data Ltd. The results showed that the vessel failed the Roll Test, contrary to results achieved by the MCA.</td>
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<td>27 April: As soon as the MA received the report prepared by Marine Data Ltd. They wrote to the Petitioners cancelling the FSVC with immediate effect.</td>
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<td>2 May: A copy of the vessel’s full file was released by the MCA to the Petitioners.</td>
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3. Petition and Committee’s Considerations

For ease of reference the Committee has divided the Petition into separate allegations or complaints. The Committee has responded to each point indicating the evidence it has considered.

3.1. IN TYNWALD

TO THE HONOURABLE MEMBERS OF TYNWALD COURT

The Humble Petition of

Mr Dante & Mrs Joan Spadoni, 10 Sunnydale Avenue, Athol Park, Port Erin

Sheweth That

3.2. THE PETITION

We purchased the UK registered fishing vessel Suzanna D in April, 1999.

COMMITTEE’S RESPONSE:

3.2.1. A copy of the Bill of Sale (Doc 444) shows the Petitioners bought the Suzanna D on 29 March 1999.

3.3. THE PETITION

At the time of purchase the vessel had been on the United Kingdom Fishing Vessel Register for more than 18 years and held a current Safety Certificate, valid until January 2001, issued by the United Kingdom Maritime Coastguard Agency (MCA). Without a valid Safety Certificate the vessel would not have been considered for purchase.

3.4. COMMITTEE’S RESPONSE:

3.4.1. The vessel was first registered on the United Kingdom Fishing Vessel Register on 9 May 1981 (Doc 17) and had a Fishing Vessel Certificate valid until 21 January 2001 (Doc 111).

3.5. THE PETITION

In May 1999 the vessel was transferred to the Manx Register, as PL72. Registering the vessel in the Isle of Man necessitated the vessel being submitted for survey to the Isle of Man Marine Administration (MA). Such a survey is a requirement under the 1975 Safety Regulations in order for a vessel to be issued with a Manx Fishing Vessel Certificate.

3.6. COMMITTEE’S RESPONSE:

3.6.1. Registration of the Suzanna D on the UK Fishing Vessel Register ceased on 14 April 1999 in readiness for its transfer to the Manx Register. On 14 May 1999 Mr Paul Lucas from the MCA (Doc 96) was appointed by the MA to undertake ‘initial and pre-registration’ surveys of the Suzanna D on behalf of the MA. In a letter from the MA to the MCA dated 14 May 1999 (Doc 97) regarding the appointment
the MA requested that the MCA contact it if there were any stability requirements. The appointment of a MCA surveyor by the MA is in line with established practice.

3.7. **THE PETITION**

The vessel was preparing to undergo an extensive refurbishment programme at the Portsmouth Shipyard of Vosper Thornycroft. As the refurbishment was to be carried out over a number of weeks the MA considered it more practical to appoint the MCA to act as its agent and conduct the necessary surveys on its behalf.

MCA Surveyor and naval architect Paul Lucas was appointed by the UK MCA to carry out the surveys of the vessel. During the refurbishment Mr Lucas made a number of visits to the vessel to carry out the survey work. During his visits he also consulted with the Shipyard and Contractors on every aspect of the ongoing refurbishment. The vessel's refurbishment was completed in November 1999 and, before leaving the Vosper Thornycroft Shipyard, MCA Surveyor Paul Lucas tested the vessel's stability by means of a 'roll period test.' Paul Lucas confirmed to us that all survey work had been satisfactorily completed and issued the vessel with a Safety Certificate pending the issuing of the full term Manx Fishing Vessel Certificate. The vessel sailed to the Isle of Man and commenced fishing operations.

3.8. **COMMITTEE'S RESPONSE:**

3.8.1. Mr Lucas (MCA) undertook the surveys (Docs 95, 96, 97 and 109 relate to the appointment). However the Committee received no written evidence to confirm the number of visits to the vessel by Mr Lucas during the course of his survey work. In addition there is no written evidence to confirm consultation between Mr Lucas, the Shipyard and the Contractor who covered all aspects of the refurbishment. Mr Lucas issued a letter of satisfaction to the MA on 10 January 2000 (Doc 112). The Committee has not viewed evidence that Mr Lucas issued a Fishing Vessel Safety Certificate pending the issuing of a full term Manx Fishing Vessel Safety Certificate.

3.9. **THE PETITION**

In January 2000 we contacted the MA regarding the full term certificate but were informed that the MA had reservations concerning the vessel's stability test carried out by MCA Surveyor Paul Lucas in Portsmouth. The MA was particularly concerned about the type of stability test Mr Lucas had conducted to assess the vessel's stability. The MA informed us of its request to Paul Lucas to test the vessel's stability by means of a definitive 'inclining test.' (NB Neither the MCA nor the MA conduct inclining tests on vessels). Inclining tests are carried out by consultant naval architects employed by the vessel owner with MCA or MA Surveyors in attendance to witness the procedure. At no time were we as owners of the Suzanna D requested to conduct a full stability (inclining) test by either the MA or the MCA.
3.10. COMMITTEE’S RESPONSE:

3.10.1. There is no record on file that Mrs Spadoni contacted the MA regarding the full term Fishing Vessel Safety Certificate. However Mrs Spadoni has stated that on 14th December 1999 she telephoned the MA.

3.10.2. The MA wrote to the Petitioners on 26 January 2000 (Doc 115) explaining that it (MA) had requested Mr Lucas to perform a full stability test. The MA evidenced this request by way of a hand written note on a copy of the Survey Accounts document (Doc 115 page 2). In the same document the MA noted it had previously agreed with the MCA to accept a simplified stability test in the form of a roll period test providing the results of the MCA reports were satisfactory. The roll period test results were not satisfactory to the MA. In addition the MA had concerns over discrepancies of the registered dimensions of the vessel (the length and breadth differ in the drawings, previous registration details and in Mr Lucas’s report) and uncertainty over the loading conditions of the vessel during the roll period test. The MA offered to perform another roll period test, verify the vessel’s dimensions and load conditions at no cost to the Petitioners. At this stage the vessel still had not been issued with a Fishing Vessel Safety Certificate (Form FV1) and therefore could not legally fish. This letter also contains the first hint that Mr Lucas was no longer with the MCA as he was unable to be contacted for his comments on the key points contained in the letter.

3.10.3. In relation to the suggestion that the MA had requested a full stability test Mrs Spadoni responded that this test should have been requested through the registered owners and as owners they had not been requested to do so. She also dismissed the MA concerns over the roll period test results citing Mr Lucas’s satisfaction with the way the roll period test had been conducted (Doc 114).

3.10.4. The Committee considers that Mrs Spadoni was correct in that neither the MCA nor MA conduct full inclining tests on vessels themselves but require that they be carried out by Consultants.

3.10.5. As background information to the above the Committee considered the following evidence. In a letter dated 10 January 2000 to the MA (Doc 112) Mr Lucas confirmed the vessel had completed a satisfactory survey on 24 November 1999 and forwarded copies of paperwork (which were incomplete). This was the first sight the MA had of the relevant paperwork including the ‘Roll Period Test’ report. Mr Lucas had been late submitting the papers and had been pursued by the MA for them. In a letter dated 25 January 2000 (Doc 113) the MA noted the roll period test survey pass was marginal and requested the details of the firm engaged to conduct the full stability test as requested by the MA on 15 September 1999 (the letter of the 15 September 1999 from the MA to the MCA cannot be located by the MA) so these results could be reviewed.

3.10.6. The Committee in its investigations found that there was an incomplete audit trail with regard to the alleged request to perform a full inclining test. The MA in a letter dated 11 December 2007 (Doc 447) stated that there was no copy of the letter issued 15 September 1999 in which they alleged they requested Mr Lucas to undertake this test and used the handwritten note attached to a fax dated 26 January 2000 (Doc 115 page 3) as evidence of having done so. Examination of
Page 3 below would suggest that the handwritten comment on a ‘Post it Note’ read ‘NO FULL STABILITY REQUIRED’. The Committee considers that the note could have been written either at the time of the survey or written some time after the survey. In either case it is still open to interpretation either as No - a Full stability test is required or as a post event comment expressing surprise that No full stability test was required (Doc 453).

3.10.7. The Committee requested information from the DTI as to the authors of the ‘post it’ notes and in a letter dated 11 January 2008 (Doc 453) Mr Welsh (Director of the Isle of Man Ship Registry) states that the ‘post it’ note were written in the Isle of Man. He further states that the larger ‘post it’ note dated 15/9/99 was written by himself the then Duty Principal Surveyor at the time) reflecting a phone call with Paul Lucas of the MCA on the 15 September 1999. Mr Welsh further confirmed that the note had been annotated by John Wade (Principal Surveyor) with “NO FULL STABILITY REQUIRED!” The date of this annotation is unknown. The Committee note that the advice on the definitions of tests given by the MA (Annex 6) state that, “in actual fact there is no such thing as a Full Stability Test. This is a colloquial expression referring to the fact that the vessel has an approved Stability Booklet.”

Continued ....
3.10.7. Notwithstanding the interpretation of the ‘Post it Note’ the Committee comments that the working file used by the MA had four different authors and was difficult to follow.

3.10.8. The MCA have no record of the request for a full stability test ever having been made (Doc 121) and cite a handwritten note by Mr Lucas resulting from a telephone conversation with Mr Ramsbottom (MA) on 14 June 1999 (Doc 99) which said “Agree stay on roll test but advise owners if any problem would require full stability” as reason no full stability test was carried out. The Committee comments that this could be perceived as an example of a lack of communication between the two parties. In the letter (Doc 121) the MCA concede that given the extent of the modifications it “probably would have been correct to go for a full stability test”. The MA responded by adding the context in which Mr Ramsbottom made his comments was that during the early stages of the survey work it looked as though a roll period test would be sufficient, hence the comments made in June 1999. However, once the extent of the refit became known, Mr John Wade, Principal Marine Surveyor (MA) stated that he requested (via a telephone conversation with Mr Lucas) a full stability test be carried out (Doc 125 para 2). The Committee notes however that the MA had been advised by the Petitioners on 11 May 1999 (Doc 93) that a major refit was being undertaken.

3.10.9. The Committee comments that all parties should have appreciated that after a major refit a full stability test would have been prudent.

3.11. THE PETITION
On January 31st 2000 the MA issued the Suzanna D with a short term certificate valid until February 29th 2000. The reason the MA gave for this temporary Certificate was the ‘roll test’ result obtained in Portsmouth. The MA reasoned the result to be a fail as the MCA had used a 10mm ‘margin for experimental error’ allowing the vessel to pass the test. However, the MA informed us it did not permit the use of this margin in Isle of Man tests. Despite not accepting the use of this margin, the MA renewed the vessel’s Safety Certificate from March 2000 to June 2001.

3.12. COMMITTEE’S RESPONSE:

3.12.1. On 31 January 2000 the MA issued a short term Fishing Vessel Safety Certificate valid until 29 February 2000. No reason was given as to why the MA decided to issue the Certificate (Doc 116 page 2). However the evidence shows that on 28 January 2000 the MCA faxed Mrs Spadoni confirming the results of the roll period test carried out by Mr Lucas would be acceptable to them (Doc 116). Although there is no documentary evidence, it would appear Mrs Spadoni faxed the MCA’s comments to the MA on 28 January 2000 (Doc 116 page 2). The Committee comments that the above actions of the MA appear to have been taken in a spirit of willingness to help.

3.12.2. On 8 February 2000 the MA issued a full term Fishing Vessel Safety Certificate, but stated that due to the marginal results of the roll period test carried out by the MCA in November 1999, the MA would require a further roll period test to be
carried out and witnessed by the MA during the next periodical inspection of the vessel in June 2001. The full term Certificate was therefore restricted to two years running until the period of the next inspection, rather than the usual four years. (Doc 117). The Committee did not receive any written evidence to indicate why the MA, notwithstanding its reservation about the roll period test results, agreed to issue a full term Certificate albeit restricted to two years. However Mr Welsh (MA) in his evidence to the Committee on 15 June 2007 stated that the decision to issue a 'temporary' Certificate was a judgement call made with the business interests of the Petitioners in mind.

3.12.3. On 9 February 2000 Mrs Spadoni telephoned the MA to express her dissatisfaction over the issue of a two year full term Certificate instead of the usual four year Certificate (Doc 118). The MA responded by stating that it had requested the full file of the Suzanna D from the MCA so that the MA could determine the vessel's stability history. The MA confirmed it did not allow a '10mm margin for error' as used by the MCA and that had this not been applied by the MCA the vessel would have failed to meet the minimum stability requirements. The MA went on to say that 'not wishing to add considerably to the cost already incurred by the Petitioners they were prepared to accept the roll period test results of the MCA and issue a full term Certificate limited to two years' up to the period of the next inspection. Given the marginal stability of the vessel the two year Certificate was issued, subject to a further roll period test being done during June 2001 (Doc 117).

3.12.4. On 15 February 2000 (Doc 119) Mrs Spadoni wrote to the MA questioning the validity of the decision by the MA not to allow a margin of error citing a UK Survey Memorandum dated 31 July 1980 (Docs 8 and 9) as evidence that a 10mm margin of error is allowed in roll period tests and this UK Memorandum is still in effect. The MA commented (Doc 445) that this relates to the UK Memorandum No.24 issued 31 July 1980 to all UK fishing vessel surveyors and copied to the MA. Survey Memoranda provide guidance to surveyors and may set out clarification on practical points. They are not statutory documents and do not take the place of, or override, statutory regulations. They may be used as reference documents in the Isle of Man but have no effect on the applicable Isle of Man Regulations.

3.12.5. On 24 March 2000 (Doc 128) after a discussion with Mrs Spadoni the MCA faxed the MA stating that it believed that the position the Petitioners found themselves in was not the fault of the Petitioners and that the MCA and MA should resolve the matter between them. The MCA then stated that there was no documentation to support the request by the MA for Mr Lucas to undertake a full stability test, but conceded in the circumstances (major refit) a full stability check would have been desirable. It should be noted at this point that Mr Lucas had been dismissed from the MCA on an unrelated matter and was therefore unavailable to comment on the circumstances surrounding the full stability request. With regard to the roll period test and the issue of the 10mm margin of error, the MCA confirmed they were fully satisfied that the test was not marginal and therefore was acceptable. They suggested to the MA as a compromise that the vessel underwent a full roll period test at the next docking and if the results were satisfactory a full four year Certificate could be issued (Doc 128).
3.12.6. On 31 March 2000 the MA confirmed to the MCA that the Petitioner’s Advocates Dickinson, Cruickshank & Co had agreed to the MA affecting a further roll period test (Doc 129).

3.12.7. On 5 April 2000 the MCA faxed (Doc 130) the MA to inform it that Mrs Spadoni had not agreed to the compromise and was intending to have a full stability test carried out to resolve the matter once and for all. However, this would take time to arrange. It should be noted that the insurance on the vessel was due to expire on 12 April 2000 and the insurers had advised that the policy would not be renewed if the vessel only had a short term Certificate. The MCA requested the MA issue a full four year Certificate pending a full stability test being done by the next survey in June 2001.

3.12.8. On 6 April 2000 Dickinson, Cruickshank & Co advised the MA that the Petitioners had agreed to the MA suggestion (Doc 117) that a full stability test be carried out between March 2001 and June 2001 and in the meantime requested that a full four year Certificate be issued to resolve the pending insurance issue. MA noted that the Petitioners accepted that if the vessel failed this inspection then the Certificate would be withdrawn (Doc 131).

3.13. THE PETITION
On April 17th 2000 and after receiving the regulatory file of the Suzanna D, the MA wrote to us and explained that after "a detailed inspection of its contents ...... Research of this data has highlighted circumstances which, in our opinion, puts the stability for this vessel in sufficient doubt as to require us to ask for a roll test to be effected at the earliest opportunity".

3.14. COMMITTEE’S RESPONSE:

3.14.1. The MA wrote on numerous occasions to the MCA requesting the full MCA file relating to the Suzanna D be sent (Doc 123 and 125).

3.14.2. On 11 April 2000 (Doc 132) after receiving the full file from the MCA, the MA wrote to Dickinson, Cruickshank & Co and stated “we have now ...... had the opportunity of a detailed inspection of its contents. Research of this data has highlighted circumstances which, in our opinion, puts the stability data for this vessel in sufficient doubt as to require us to ask for a roll test to be effected at the earliest opportunity in order to satisfy the questions this Administration now has”. The MA stated in a letter dated 27 November 2007 (Doc 445) that its file showed an analysis of the data by Peter Chreseson (MA) of 8 roll period tests conducted on the vessel by the UK authorities from 04/03/82 to 16/11/99. Mr Chreseson’s analysis concluded the vessel had a “history of somewhat marginal roll tests” and commented on the acceptance of the final roll period test on 16/11/99 where the result was marginal and accepted only using the 10mm adjustment. He queried the conditions under which the test had been conducted. The MA requested the further roll period test be performed within one month and stated that the MA’s costs for the test would not be charged to the Petitioners (Doc 132).
3.15. **THE PETITION**

On 20 April 2000 we were requested to attend a meeting with the MA. The Director of the MA and two MA surveyors were in attendance at that meeting. The Director told us that examination of the file by MA surveyors had raised “serious and grave concerns for the safety of vessel and its crew”. As a result we were informed that the vessel would not be permitted to continue fishing operations until the vessel’s stability was re-tested. The vessel was re-tested later that month and failed by a massive margin, a result at the opposite end of the scale to the result obtained in Portsmouth.

3.16. **COMMITTEE’S RESPONSE:**

3.16.1. On 20 April 2000 a meeting took place at the Office of the MA attended by:

- Mr and Mrs Spadoni
- Mr C F Douglas (Director MA)
- Mr W D Howell (Surveyor MA)
- Mr R E Welsh (Surveyor MA)

It was agreed that the MA Surveyors would contact the Petitioners on 25 April 2000 to discuss requirements for the roll period test and arrange for the test to be conducted as soon as possible thereafter. Amongst other conditions agreed by the Petitioners was that if the vessel failed the roll period test, the current two year full Fishing Vessel Safety Certificate would be withdrawn until the vessel’s stability problems had been rectified and full stability tests had been carried out (Doc 433).

3.16.2. On 26 April 2000 the vessel was subject to a roll period test at Port St Mary, the test was carried out by Mr C Baker of Marine Data (IOM) Limited. Mr Chreseson and Mr Ward (MA) were present at the test. Mr C Baker, Director of Marine Data, has confirmed that it would have been normal practice for Mr Chreseson and Mr Ward to make a basic inspection of the vessel and they would have been likely to have noticed the concrete blocks as they were an unusual addition in the fish room (doc 465). The vessel was detained at Port St Mary (Doc 136) until either a certificate permitting the vessel to be moved for alterations or a new MFVC had been issued.

3.16.3. On 27 April 2000 the MA informed the Petitioners that the vessel had failed the test and therefore the Fishing Vessel Safety Certificate issued on 8 February 2000 was cancelled with immediate effect.

3.16.4 On 5 May 2000 the vessel was subject to an inclining test at Ramsey (Doc 150). A representative of the MA was present at the test. Mr Baker has confirmed that it would have been normal practice for the representative of the MA to have made a basic inspection of the vessel and would have been likely to have noticed the concrete blocks as they were an unusual addition in the fish room (doc 465). On 15 May 2000 Mr Baker faxed a letter to Mr Chreseson (MA) (Doc 141) the fax makes reference to 4.2 tonnes of concrete block ballast. The Committee considers that it is therefore clear that the MA had written evidence of the presence of the concrete blocks in May 2000.
3.17. THE PETITION

The MA issued Manx Fishing Vessel Certificates to the Suzanna D in the full knowledge that the MCA Surveyor Paul Lucas had been negligent in not carrying out its instructions for the vessel to be subject to a full inclining test.

3.18. COMMITTEE’S RESPONSE:

3.18.1. In November 1999 verbal assurance of the vessel’s stability was given by Mr Lucas to the MA.

3.18.2. On 10 January 2000 (Doc 112) the formal roll period test results were received by the MA.

3.18.3. On 31 January 2000 the MA issued a short term (one month) Fishing Vessel Safety Certificate pending clarification of stability and other matters. At the time the Certificate was issued the MA were in correspondence with the MCA regarding the roll period test results and the circumstances in which it was undertaken (Doc 115). At this point the MCA were supporting the roll period test results as valid and satisfactory (Doc 116). On 25 January 2000 the MA had requested the results of the full inclining test which at this point the MA assumed had been done (Doc 113 and evidence given by Mr Wade. Please refer also to Committee’s Response 3.12.2).

3.18.4. On 8 February 2000 the MA issued a full term Fishing Vessel Safety Certificate valid for two years (rather than the usual four). Mr Welsh (MA) in his evidence to the Committee on 15 June 2007 stated that the decision to issue ‘temporary’ Fishing Vessel Safety Certificates was a judgement call made with the business interests of the Petitioners in mind. There is no evidence on file to indicate why the MA agreed to issue a full term Fishing Vessel Safety Certificate.

3.18.5. At this point during the case the MA were trying to ascertain the stability history of the vessel and had requested the MCA’s file on the vessel for review (Doc 117). The MA was under pressure to issue a full Certificate by the Petitioners, their legal representatives and the MCA.

3.18.6. The full extent of Mr Lucas’s negligence was not known at the point when either the one month or two year Certificates were issued. The MCA were standing by Mr Lucas’s test results (Doc 116).

3.19. THE PETITION

The MA was also fully aware that

a) Paul Lucas had tested the vessel by a method not approved by them for this particular vessel.

3.20. COMMITTEE’S RESPONSE:

3.20.1. The Committee considers that this statement is ambiguous. Mr Lucas performed a roll period test in November 1999 which is an approved test used by both the MA and MCA to test the stability of vessels. Mr Lucas did not perform a full
inclining test the request for which remains in dispute between the MA and MCA. Both tests are ‘approved’ tests by both administrations for the purposes of establishing a vessel’s stability.

3.20.2. Mr Lucas as a trained surveyor should have known what appropriate stability tests should have been carried out given he was on site during the course of the refit. He had access to the shipyard and contractors and was able to observe the extent of the refit which lasted seven months (May 1999 to November 1999).

3.21.  b) Paul Lucas had never at any time offered any explanation for his actions.

3.22.  COMMITTEE’S RESPONSE:

3.22.1. There is no record of any comments or explanation made by Mr Lucas on this case. The last correspondence with Mr Lucas was his letter of 10 January 2000 when he confirmed the vessel had completed a satisfactory survey on 24 November 1999 and forwarded copies of paperwork which in the view of the MA were incomplete in that no full inclining test results were forwarded (Doc 112). Subsequent correspondence with the MCA revealed Mr Lucas left the MCA some time before 8 March 2000 (Doc 124). On 5 April 2000 the MCA stated that Mr Lucas was dismissed on an unrelated matter (Doc 130). His departure from the MCA came some time before the extent of his actions and their impact on the case were known. It is not known whether Mr Lucas was approached to give an explanation, but given the nature of his departure from the MCA this seems unlikely.

3.22.2. The Committee notes that Mr Lucas was appointed (Doc 96) for the purpose of ‘conducting the initial and pre-registration surveys of the Suzanna D on behalf of the Government of the Isle of Man in accordance with any statutory provision relating to Merchant Shipping’. Therefore the Committee are of the view that Mr Lucas had a duty to make himself aware of the statutory provisions relating to Merchant Shipping on the Island in that the MA did not accept the 10mm deficiency to allow for experimental errors as was MCA practice.

3.23.  c) The result obtained at the test conducted by Paul Lucas was considered a fail by the standards of the MA as apply to all Isle of Man fishing vessels.

3.24.  COMMITTEE’S RESPONSE:


3.25.  d) Paul Lucas had been in possession of the vessel’s MCA file during the survey period, and

3.26.  COMMITTEE’S RESPONSE:

3.26.1. There is no clear evidence available to the Committee as to whether Mr Lucas had the vessel’s MCA file or not during the survey period.
3.27. e) Paul Lucas was negligent in not notifying his administration that the previous stability test on the vessel was a fail, and not a pass, and that the vessel was in possession of an ‘erroneous safety certificate’ at the time of our purchase.

3.28. COMMITTEE’S RESPONSE:

3.28.1. The Committee presumes the reference to ‘his administration’ by the Petitioners is a reference to the MCA. The Committee agrees with the factual interpretation by the Petitioners however the issue is outside the remit of the Committee. The Committee notes that the evidence showed that when the Petitioners purchased the vessel it had a history of roll period test ‘passes’ and a Fishing Vessel Safety Certificate issued on 16 October 1996 valid until 21 January 2001. Subsequent to the purchase and the issue of a Fishing Vessel Safety Certificate investigations have revealed that the passes on stability tests conducted in the UK were fails.

3.29. THE PETITION
The MA issued Safety Certificates to the Suzanna D in the knowledge that the vessel did not meet the MA’s own safety requirements and, in doing so, endangered the lives of its entire crew.

3.30. COMMITTEE’S RESPONSE:

3.30.1. The roll period test was conducted on 16 November 1999 and attended by a Mr Paul Lucas (MCA Surveyor) (Doc 100). The vessel passed the roll period test by a margin of 8mm which gave regard to a 10mm deficiency to allow for experimental errors. The use of a 10mm experimental error was MCA practice but such margin for experimental errors was not accepted by the MA.

3.30.2. When Mr Lucas filed his paperwork on 10 January 2000 with the MA, the MA reviewed the roll period test report and noted the marginal pass of 8mm (or -2mm fail without the allowance for experimental error) and requested the results of the full stability test from Mr Lucas (Doc 113). At this point the MA assumed Mr Lucas had undertaken the full stability test and the results had not been forwarded with all other paperwork. The Committee notes that the Petitioners knew that a full inclining test had not been done (Doc 116 page 2).

3.30.3. The Committee also notes that the Petitioners reported to the Committee that there had been a handling difficulty with the Suzanna D in heavy seas whilst travelling to the Isle of Man.

3.30.4. The Fishing Vessel Safety Certificate issued by the MA on 31 January 2000 was a short term Certificate valid for one month ‘pending clarity of stability information’ (Doc 116 page 2). It is unclear from the evidence why the MA issued this Certificate as the vessel did not meet its regulatory requirements. Mrs Spadoni faxed information to the MA on 28 January 2000 (Doc 116) and three days later the Certificate was issued.

3.30.5. The final Certificate was issued by the MA on 8 February 2000, after a review of the survey documentation as provided by the MCA but not the full file. The final Certificate was valid for two years rather than the usual four and was conditional
on a further roll period test at the next periodical inspection of the vessel due in June 2001 (Doc 117). There is no evidence on the file to indicate why the MA issued this Certificate. However, Mr Welsh (MA) in his evidence to the Committee on 15 June 2007 stated that the decision to issue ‘temporary’ Fishing Vessel Safety Certificates was a judgement call made with the business interests of the Petitioners in mind.

3.30.6. The Committee notes that the Petitioners, supported by the MCA, were exerting considerable pressure on the MA at this time to issue a Certificate. The Committee also notes that the Petitioners were under financial pressure to re-establish their business.

3.30.7. The Committee considers that the crew were at risk during this time. The Committee notes that both the Petitioners and the MA knew that the Suzanna D had not passed the appropriate stability test.

3.31. **THE PETITION**
Since April 2000 the MA has not conducted any formal investigation into this matter. At no time since the conclusion of the IOM tests, has the MA advised us of their reasons for their original concerns expressed in the letter of 17th April and meeting of 20th April 2000. Nor have we had an explanation from the MA of the causes of our vessel’s stability failure. This Manx registered vessel was sailing with a Manx crew for 4.5 months whilst, unknown to us, it was a major stability failure.

3.32. **COMMITTEE’S RESPONSE:**

3.32.1. When the MA received the full file it wrote to Dickinson, Cruickshank & Co on 11 April 2000 (Doc 132) outlining its concerns. The MA met with the Petitioners on 20 April again outlining its concerns.

3.32.2. The Committee notes that there is no statutory requirement for the MA to provide an explanation of the cause of the vessel’s failure. However after the Isle of Man tests produced a different result from that carried out by its agent, Mr Paul Lucas, the Committee note that the MA did not conduct any formal investigation into this matter.

3.33. **THE PETITION**
We believe that there had been a breach of the Fishing Vessel Safety Regulations and that the MA had a duty to initiate an investigation as to the reasons for the vessel’s stability failure which had caused the lives of our Manx crew to be placed at risk. We are unaware of any such investigation.

3.34. **COMMITTEE’S RESPONSE:**

3.34.1. In a letter dated 1 November 2007 (Doc 445) on behalf of the Committee the MA was requested to comment on the above statement. The MA replied 27 November 2007 (Doc 445) stating that it did not feel it appropriate to comment on the statement.
3.34.2. The Committee notes the lack of a written record of instruction for a full stability test and the apparent lack of robust criteria for the issue of a valid Fishing Vessel Safety Certificate. The Committee considers that the MA should review its administrative procedures for progressing applications and should have strict governance processes in place to ensure Certificates are only issued to vessels that fully comply with Isle of Man statutory requirements.

3.35. **THE PETITION**

The MA has failed in its responsibility to provide the Suzanna D and its crew with the statutory duty of care as a Manx registered fishing vessel.

3.36. **COMMITTEE’S RESPONSE:**

3.36.1. Legal advice was sought by the Committee on the duty of care and such advice referred to the case of Reeman v UK Department of Transport which was decided in the Court of Appeal. In that case the plaintiffs claimed against the UK Department of Transport damages for breach of the common law duty of care (not a statutory duty) alleged to have been owed to them under the law of negligence.

3.36.2. Legal advice stated that the Court of Appeal held that (inter alia) the UK statutory framework, which is similar to the Merchant Shipping (Registration) Act 1984 of Tynwald, was designed to promote safety at sea; duties as to seaworthiness were imposed on the owners of the vessels and the DOT was then to check and certify that those duties had been complied with; the purpose of issuing certificates was the promotion of safety at sea.

3.36.3. Legal advice further stated that on the other hand, the protection of those whose commercial interests might foreseeably be affected by unseaworthiness of vessels formed no part of the purpose of the legislation and no part of the purpose for which the fishing vessel certificates were issued. A potential purchaser of a certificated vessel could always take steps, such as surveying the vessel or stipulating for contractual warranties, that would provide protection against the risk that the Certificate did not reflect the true condition of the vessel.

3.36.4. The Reeman decision therefore emphasises that in the context of duty of care, a court is likely to emphasise that a distinction needs to be drawn between the safety of the crew of a registered fishing vessel, to whom a duty of care is owed by virtue of the 1984 Act of Tynwald, and the commercial interests of such a vessel to whom such a duty is not owed.

3.36.5. The Committee is of the view that under interpretation of the above that the MA owed a duty of care to the crew of the Suzanna D. The Committee considers that the MA breached its duty of care to the crew when under considerable pressure from the Petitioners.

3.36.6 Following the Court of Appeal Judgement, the Reemans submitted a complaint to the UK Parliamentary Commissioner for Administration regarding the actions of the Surveyor General’s organisation (UK Department of Transport (DOT) of
which the MCA was part) in wrongly certifying as seaworthy a fishing vessel which Mr and Mrs Reeman subsequently bought, and that the DOTs errors had caused them substantial financial loss as they were forced to sell the uncertified vessel at scrap value.

3.36.7 The Commission, amongst other findings, concluded that the Reemans were clearly causalities of the UK DoT's maladministration and invited the DoT to consider compensation based on clear and undisputed medical evidence of Mr Reeman's damaged health. The UK DoT (now DETR) accepted that the Reeman's complaint was justified and undertook to consider a qualified and evidenced compensation claim.

The Committee notes that Mr and Mrs Spadoni received an undisclosed amount from the MCA in full and final settlement of their claim.

3.37. THE PETITION

Behind the scenes, the MA conducted a campaign of ‘black propaganda’ against us. It was alleged that our refurbishment contractors were ‘dodgy’ and on the ‘black market’. It was alleged that we could not provide invoices for our refurbishment work and that such work itself could have caused the stability problem. There is full evidence in refutation of these damaging allegations. Such ‘black propaganda’ has permitted the MA to divert any attention from its central role and conduct in this matter.

3.38. COMMITTEE’S RESPONSE:

3.38.1. The Committee notes that in an effort to resolve the difficulties encountered by the Petitioners Chief Ministers Hon Donald Gelling MHK and Hon Richard Corkill MHK wrote letters or met with the Petitioners regarding their claim against the MCA on at least six occasions between 2000 and 2004 (Docs 152, 154, 178, 185, 238 and 262).

3.38.2. On 17 July 2001 (Doc 179) the then Minister for the Department of Trade and Industry, Hon David North MHK in a letter to Mr John Rimington MHK (in his capacity as the Petitioner’s MHK) regarding the dispute between the MCA and the Petitioners stated, “I do not believe that it would be proper for this Department to intervene directly in the dispute as you suggest”.

3.38.3. On 16 August 2001 (Doc 183) the then Chief Secretary, Mr J F Kissack, in a letter to Mr J Rimington MHK regarding his requests for intervention in the dispute between the MCA and the Petitioners, stated that, “In the Spadoni case, a great deal of effort has been put in but there must be a limit.”

3.38.4. On 10 September 2001 (Doc 432) a Meeting was held between Mr J F Kissack, Mr Attorney, Mr Colin Douglas (Marine Administration) and Mrs Della Fletcher. Minute 6 of the meeting states ‘The work appears to have been done without plans or designs - on the cheap’. Mr Douglas (Principal Surveyor and former Director of MA), in his statement to the Committee on 23 August 2007, advised that his recollection of the meeting was that the Petitioners had been asked to supply copies of designs or plans of the refit but did not produce them. Mr
Douglas reflected that the comment “on the cheap” could relate to the lack of copies of the aforementioned documents. The Petitioners in their evidence to the Committee stated that they were never requested to submit invoices etc.

3.38.5. The Committee notes that Mr Attorney has expressed his reservations with regard to the conclusions which are referred to in Minute 6 of the meeting notes.

3.38.6. On 11 September 2001 (Doc 193) Mr J F Kissack in a letter to Mr J Rimington MHK stated that he was sorry that Mr Rimington had interpreted his comments as reluctance to assist. He further reported that the Council of Ministers had asked him to consult with the Department of Trade and Industry and the Attorney General on whether the matter of the Suzanna D needed to be brought to the Council of Ministers for resolution. He had done so, and stated what his advice to Council would be, which in essence was endeavouring to expedite the MCA offer and offering to assist the Spadoni family should they wish to pursue the UK Ombudsman route.

3.38.7. On 21 May 2002 (Doc 251) Hon J Rimington MHK, at this point in time the new Minister for the Department of Agriculture, Fisheries and Forestry, wrote to the then Chief Minister Hon R Corkill stating that there have ‘been allegations and innuendos’ surrounding the whole Spadoni/MA/MCA issue which amounted to black propaganda against the Petitioners.

3.38.8. On 10 June 2002 (Doc 262) a Meeting took place between Hon R Corkill MHK, Hon J Rimington MHK, Mr and Mrs Spadoni, their son, and Captain Howell MA Director. On the Agenda was;
   a) Statement of Problem
   b) Black Propaganda (Financial and Culpability) and
   c) Government Support.
Unfortunately there are no minutes recorded of this Meeting.

3.38.9. On 11 June 2002 (Docs 265 and 266) Mr John Rimington wrote to the Director of MA stating that he was recording essential points of the meeting in relation to the MA and the claim against MCA. Mr Rimington alleged that the Director had stated he was unable to “fight” on behalf of the Petitioners as their refit of the boat in 1999 had “muddied the waters”. Mr Rimington also alleged that the Director had accepted that “the vessel was an historic stability failure”.

3.38.10. The Director’s reply on 24 June 2002 (Doc 270) construes a different interpretation to the meeting, stating that because the MA “did not dispute” or “appeared to accept” should not be interpreted as agreement. The Director gave evidence in his letter to confirm that in his opinion the refit had “muddied the waters”. The Committee comment that this statement is in contradiction with the evidence on the file.

3.38.11. On 7 January 2003 (Doc 305) Chief Minister Hon R Corkill responded to further correspondence from Hon J Rimington MHK (Doc 304) regarding the Director’s alleged statements at the 10 June 2002 meeting. Mr Corkill stated that the Attorney General’s advice was that Mr Rimington’s questions could not be answered as it seemed possible that the Petitioners may decide to pursue
litigation and therefore the matter was subjudice. The Chief Minister also
refuted the alleged quotes of the Director and concluded that “the MA, and this
Office, have for many years both endeavoured to be helpful in regard to the
Spadoni’s concerns and at this point I feel that further correspondence will not
be productive.”.

3.38.12. On 1 April 2003 (Doc 321) the Department of Trade and Industry, in a letter to
Hon J Rimington MHK with regard to the request for access to information
relating to the Suzanna D, stated that the Department remained of the view
that Exemption Category 4 of the Code of Practice was applicable and access to
the files should continue to be declined. Access was requested on at least six
occasions between 2000 and 2004 (Docs 152, 154, 178, 185, 238, and 262).

3.38.13. At the Tynwald debate on 19 November 2003 (Hansard 19 November 2003
Annex 7) Hon J Rimington MHK, then Minister for Department of Agriculture,
Fisheries and Forestry, stated that the Marine Administration ‘has either been
the source or the conduit for a stream of lies and innuendo that has served to
undermine support for the Petitioners from Politicians and senior civil servants’.
Hon A Downie, MHK, Minister for Department of Trade and Industry and Mr L
Singer MLC, Member for the Department, in their replies made a number of
statements (see 3.44.) relating to the MCA, the Petitioners and the use of
concrete blocks.

3.38.14. Upon request the Department of Trade and Industry could not produce any
briefing notes for Hon A Downie, MHK. However, Mr A Downie, MLC, provided
the Committee with briefing notes from the Department of Trade and Industry
for his Tynwald statement. The notes and the Hansard record show the views
that Hon A Downie, MHK expressed in Tynwald were those in his briefing notes.
With regard to Mr Singer MLC, similarly the Department of Trade and Industry
were not able to produce any briefing notes when requested to by the
Committee, although it would be normal practice that a member of a
Department would have view of any Ministerial briefing notes. The record in
Hansard shows that Mr Singer MLC appears to use the words of the MA when
he stated that:

‘And the Marine Administration believes that there is evidence that the owners
added the additional ballast to the vessel after the roll test, that this was not
made known to the MCA or the Marine Administration and amounts to an
unauthorised significant change’.

Mr L Singer states in a letter dated 21 August 2008 (Doc 467) to the Committee
that he recollects viewing the Ministerial briefing notes regarding this matter
and that his words in Tynwald would only reflect this briefing and any briefings
he had been given in Department meetings.

Please see 3.44.4

3.39. **THE PETITION**

In April 2003, when the MCA accused us of making an unauthorised
addition of concrete blocks to our vessel, the MA (who had all the
evidence at hand) neither refuted the allegations nor sought to
investigate them. Such allegations, if proven, are serious and would mean that we would be guilty of an offence under the Safety Regulations.

3.40. COMMITTEE’S RESPONSE:

3.40.1. In a letter 17 April 2003 (Doc 325) Treasury Solicitors, acting on behalf of MCA, wrote to DLA (Liverpool firm of Solicitors) acting on behalf of the Petitioners, claiming that DLA’s clients had substantially altered the vessel’s departure condition by adding a substantial quantity of concrete and water ballast to the vessel. The letter requests DLA’s clients to provide full details of the changes (the letter was not copied to the MA).

3.40.2. On 7 May 2003 (Doc 327) DLA asked for full particulars of the alleged alterations (the letter was not copied to the MA).

3.40.3. On 20 May 2003 (Doc 330) Treasury Solicitors replied giving more details of the alleged alterations.

3.40.4. On 27 June 2003 (Doc 331) DLA wrote to Treasury Solicitors setting out evidence regarding the concrete blocks (the letter was not copied to the MA).

3.40.5. The Committee notes that in a MA Update Paper submitted to the Department of Trade and Industry meeting in October 2003 (Doc 456) shows that Mr D Howell repeated the MCA’s conviction regarding their roll period test being accurate. In addition a letter from the MCA of the 21 April 2004 (Doc 404) states that “we have kept Mr Howell informed of all developments”. Both these items of information indicate that the MA was being kept informed on matters pertaining to the Suzanna D by the MCA.

3.40.6. The Committee conclude that from the evidence above that the MA were aware of the concrete blocks which were substituted for the gear in the hold in the MCA test and would therefore agree with the Petitioners that the MA neither sought to refute or investigate the matter.

3.41. THE PETITION
We strongly suspect that the MA was a willing party to the making of the aforesaid allegations.

3.42. COMMITTEE’S RESPONSE:

3.42.1. There is no written evidence that the MA was copied into the MCA allegations or any subsequent correspondence.

3.43. THE PETITION
In the November 2003 Tynwald Debate, both Mr Downie MHK and Mr Singer MLC made many incorrect and damaging statements as to the validity of our case. In particular, they repeated the allegations that we illegally made an addition of concrete blocks to our vessel which was the cause of its instability.
3.44. **COMMITTEE'S RESPONSE:***

3.44.1. At the November 2003 sitting of Tynwald, Hon A Downie MHK stated that the Petitioners added additional ballast - *'they added a quantity of concrete blocks'*. He stated that a further test was necessary which the owners had declined. In Tynwald Hon A Downie MHK stated -

> "The MCA have made further investigations and discovered that Mr and Mrs Spadoni added additional ballast to the vessel after she was tested in November. They added a quantity of concrete blocks. This was never revealed to the MCA, or to the Isle of Man Marine Administration. Both organisations only became aware of it quite recently."

However the concrete blocks were added as substitute ballast in the full knowledge of the MA and the MCA (Doc 141, 193, 367 and doc 465).

3.44.2. At the same sitting of Tynwald Mr L Singer MLC also made some incorrect statements quoting the opinion of the MA regarding the concrete blocks, example as follows -

> "One of the main changes was that concrete was placed in the bottom of the vessel, and it is suspected that this action helped produced the instability. The question is: when was this ballast added? Was it added between the two tests? And the Marine Administration believes that there is evidence that the owners added the additional ballast to the vessel after the roll test, that this was not made known to the MCA or the Marine Administration and amounts to an unauthorised significant change".

3.44.3. The Committee notes that this statement is in contradiction with the evidence in that the MA and the MCA were aware of the concrete blocks and moreover that they had been added in the period between the two tests and simply represented a substitute of one weight for another.

3.44.4. The Committee comments that the statements of Hon A Downie MHK and Mr L Singer MLC regarding the insinuation that the MA did not know about the concrete blocks are not valid. The roll period test in April 2000 (Doc 367) was conducted by Marine Data (Mr C Baker) with concrete blocks in situ with Mr Wade (MA) and Mr Chreseson (MA) in attendance and that it would be unlikely that two experienced officers would not have noticed the concrete blocks (Doc 465). In any event they are recorded in the Marine Data report supplied to the MA (Doc 141)

3.44.5. Hansard for November 2003 Tynwald Debate confirms that Hon A Downie MHK and Mr L Singer MLC made incorrect statements and therefore misled Tynwald Court. The Committee comments that these incorrect statements would have had a negative influence on the views of Tynwald members and the listening public towards the Petitioners.
3.45. **THE PETITION**
The MA is staffed by qualified, professional surveyors and naval architects. We believe it is wholly unacceptable that the MA has continued to make allegations against us when the documentary evidence in its possession does not support such allegations. We are of the opinion that the allegations were made with the intention of misleading others.

We believe that successive Chief Ministers, until recently, have been dissuaded (by the opposition of the MA) from supporting us in the manner we should expect from our Government. All of the MA’s allegations have been refuted by us and we have the same documentary evidence held by the MA to support our case.

3.46. **COMMITTEE’S RESPONSE:**

3.46.1. The briefing note for the Hon Mr A Downie MHK was prepared by the Department of Trade and Industry. The briefing note contained the statement which is reproduced above at 3.44.1. The Committee comment that the MA was present at the roll test in April 2000 and at the inclining test in May 2000 and was aware of the concrete ballast (see paras 3.16.2, 3.16.3 and 3.16.4). The Committee comments that in its view inaccurate and misleading information was contained in the briefing notes prepared for the Minister.

3.46.2. With regard to support or otherwise of successive Chief Ministers in this matter the Committee would refer to paras 3.38.1

3.47. **THE PETITION**
The above points primarily cover the involvement of the MA and not the involvement of the MCA. The MCA vessel file clearly indicates that the Suzanna D’s stability problem is long standing and, for more than 18 years, the vessel was issued with ‘erroneous safety certificates’ when the vessel consistently failed to pass the regulatory stability tests. Since examination of the MCA file by independent experts has revealed this, and the negligence of MCA Surveyor Paul Lucas has become known, we have made a claim of ‘maladministration’ against the MCA. Our claim against the MCA has yet to be resolved although the matter of this claim is outwith this petition.

3.48. **COMMITTEE’S RESPONSE:**

3.48.1. The Committee did not consider the matter of the claim of maladministration being made by Mr and Mrs Spadoni against the MCA. The matter was considered to be outside the remit of the Committee as it was within another jurisdiction. In addition the Committee noted that the matter has now been resolved.

3.49. **THE PETITION**
We are of the opinion that the conduct of the MA has undermined our claim against the UK MCA and, by ignoring the overwhelming evidence
contained within the MCA file and other documents, has formed an alliance with its UK colleagues to cover up the serious ‘maladministration’ of the MCA.

3.50. COMMITTEE’S RESPONSE:

3.50.1. The Committee comments that there is no evidence to either support or refute this allegation.

3.51. THE PETITION
We have been put out of business, costing four Manx fishermen their jobs. We have also suffered severe financial loss as a result of this matter and our health and family have been permanently damaged by this prolonged dispute.

3.52. COMMITTEE’S RESPONSE:

3.52.1. The Committee notes the comment on the financial loss and the health of the family and appreciates that this has been an extremely stressful time for all concerned.

3.53. THE PETITION
Notwithstanding the unbearable burden of stress this matter has inflicted on us the wider issues of this matter must not be overlooked. The issuance of erroneous fishing vessel certificates by Government officials is a deplorable action which knowingly puts unwitting fishermen’s lives at unacceptable risk. Such deplorable action must be investigated for the sake and lives of all fishermen and their families.

3.54. COMMITTEE’S RESPONSE:

3.54.1. The Committee considers that the workings of this Committee have investigated the relevant issues put before them.

3.55. THE PETITION
We have had explicit legal advice that, following the judgement of Reeman v DOT (Court of Appeal May 1997), there is no legal remedy in relation to the issues raised in this petition.

3.55.1. The Committee agrees that there is no legal remedy.

3.56. THE PETITION
Wherefore your Petitioners seek that Tynwald either appoints a Select Committee, or resolves to hold an Inquiry under the Inquiries and Evidence Act, to investigate the Department of Trade and Industry.

Dante Spadoni
Joan Spadoni
4. Conclusions and Recommendations

4.1. The Council of Ministers Sub-Committee on the complaints of Mr and Mrs Spadoni has carefully considered their Petition and the evidence presented to and requested by the Committee. In reaching its conclusions it has paid due cognisance to the fact that the MCA has admitted liability agreed and settled with a sum of money to the Petitioners. The Committee considers that the actions of the MCA in respect of the Suzanna D have been duly dealt with.

4.2. The Committee has noted in particular through its consideration of the numerous letters, faxes, notes of meetings, and personal statements of evidence that emotions and feelings were running high due to the large amount at stake for the Petitioners and the Committee considers that those high emotions sometimes influenced actions on both sides.

4.3. The conclusions and recommendations of the Committee are set out below for consideration by the Council of Ministers. They fall into subject headings which follow the main points of the Petition.

4.4. Purchase of Vessel, UK Fishing Vessel Register, Valid Fishing Vessel Safety Certificate

4.4.1. The Committee concurs that the Petitioners purchased the Suzanna D with an apparently valid UK Fishing Vessel Safety Certificate and that in readiness for the vessel to be surveyed for the purposes of issuing an Isle of Man Fishing Vessel safety Certificate the Petitioners requested the MA to make the appropriate arrangements. The Committee also comments that the Petitioners purchased the Suzanna D with a valid UK Fishing Vessel Safety Certificate and could not have known at that time that there had been a series of errors on testing the vessel’s stability over a considerable length of time.

4.4.2. The Committee comments that the Petitioners had arranged for and undertaken a substantial refit of the Suzanna D since its purchase by them in March 1999. As experienced fishing vessel owners they would have understood that the refit could have affected the stability of the vessel. The Petitioners did inform the MA of the major refit but there is no clear evidence that the MCA or the MA requested that a full inclining test be undertaken nor is there any evidence that the MA requested the owner to arrange the test. The Committee notes that a Licensing Authority can require a full inclining test but the onus is on the owner to agree and arrange the test.

4.4.3. Turning to the MA, the Committee comments that the MA appointed an MCA Surveyor to undertake a pre-Registration survey under Isle of Man regulations. This was a standard approach made for practical reasons and the MA had no reason to question that a MCA Surveyor was not conducting a pre-Registration survey to Isle of Man standards. In addition, the Committee notes that as early as May 1999 the MA requested that the MCA contact it if there were any stability requirements. However the Committee did not find any clarity in the documentation to confirm that subsequent requests had been made by either the MCA or the MA.
4.4.4. The Committee considers that extracts of the MA’s Working File for the Suzanna D were not clear and were not of a standard to enable a decision such as the issuing of a Fishing Vessel Safety Certificate to be made. The Committee finds that the MA did not have adequate procedures in place in 1999/2000 to ensure proper governance over the issuing of Fishing Vessel Safety Certificates.

4.4.5. The Committee recommends that:-

1. The MA puts into place appropriate procedures to ensure that Fishing Vessel Safety Certificates are only issued on clear evidence of surveys conducted to Isle of Man regulatory standards.


3. 12 months from this Report being considered by the Council of Ministers the Internal Audit Division should be requested to conduct an audit of the procedures for the issuing of Fishing Vessel Safety Certificates by the MA.

4.5. The issuing of Fishing Vessel Safety Certificates on 31 January and 8 February 2000.

4.5.1. The Committee comments that during this period of time the Petitioners placed significant pressure on the MA to issue Fishing Vessel Safety Certificates. The Petitioners wrote, telephoned and faxed the MA on a number of occasions. The Petitioners also encouraged the MCA to contact the MA to say that it (the MCA) was satisfied with the test carried out on the Suzanna D.

4.5.2. The Committee comments that the MA quite rightly raised concerns about the test and was reluctant to issue the Fishing Vessel Safety Certificates. However, the MA succumbed to the pressure and issued two, albeit restricted, Fishing Vessel Safety Certificates despite having concerns about the vessel's stability and without having seen the full survey information.

4.5.3. The Committee considers that the crew were at risk during this time. The Committee notes that both the Petitioners and the MA knew that the Suzanna D did not fulfil the safety requirements under the Isle of Man regulatory standards.

4.5.4. The Committee recommends that:-

4. The MA should not issue Fishing Vessel Safety Certificates without having had access to full survey results.

5. The MA should not issue Fishing Vessel Safety Certificates to vessels which do not meet their regulatory requirement.
4.6. **Information from the MA to the Petitioners during Spring 2000**

4.6.1. The Committee comments that the evidence of the MA shows that it contacted the Petitioners on a number of occasions during January, February, March and April 2000 both to raise concerns about the surveys, and to answer letters, faxes and telephone calls from the Petitioners. The Committee concludes that the MA was both proactive and responsive to the Petitioners approaches.

4.7. **The surveys undertaken by and the failures of Mr Paul Lucas**

4.7.1. The Committee concludes that it is unclear whether the failures of Mr Paul Lucas are a matter for the MCA or the MA.

4.7.2. The Committee notes with concern that at the time of the survey on the Suzanna D undertaken by the MCA on behalf of the MA there was no standard procedure which highlighted the differences in standards applied to stability tests or clear lines of the responsibilities between the MCA and the MA. Should the MA be minded to appoint a non-Isle of Man Surveyor in the future with a similar request for registration of a fishing vessel then the Committee recommend that:-

6   The Department of Trade and Industry liaise with the Attorney General’s Chambers to consider a Memorandum of Understanding/ Contract in respect of the survey and certification of fishing vessels and ensures it covers the following point -

   a) insurance and professional indemnity clauses.

7   The MA should review the extent of the delegation to agents involved in the process of issuing fishing vessel safety certificates on its behalf.

4.7.5. The Committee finds that confusion was caused by a different standard of fail and pass for surveys between the UK and the Isle of Man.

4.7.6. The Committee recommends that:-

8   Any delegation to other jurisdictions makes it clear that surveys are undertaken to Isle of Man regulatory standards;

4.8. **Formal Investigation by the MA into the reasons for the vessel’s stability failure**

4.8.1. The Committee finds that there is no statutory duty for the MA to conduct a formal investigation into the vessel’s stability failure. The vessel failed the stability test as conducted under Isle of Man Regulations.

4.8.2. The Committee did not see any evidence of an internal investigation by the MA into its decisions to issue the two Fishing Vessel Safety Certificates and the difference in the results of the two surveys (MCA and MA surveys).
4.8.3. **The Committee recommends that:-**

9 The MA introduce a system of internal investigation to ensure that where problems occur a review will be undertaken to identify the issues and ensure that existing procedures comply with best practice.

4.9. **The safety of the crew and the MA’s duty of care**

4.9.1. The Committee concludes that in an attempt by the MA to be helpful to the Petitioners the MA unfortunately breached its duty of care to the Crew by the issue of a temporary Fishing Vessel Safety Certificate. The Committee also concludes that the Petitioners had a duty of care to the Crew and unfortunately failed as they should have queried the lack of a full inclining test after the refit. In addition the Petitioners made repeated attempts to persuade the MA that the vessel was stable even when they were informed about the failure of the original test.

4.10. **“Campaign of black propaganda” against the Petitioners**

4.10.1. The term propaganda has been used by the Petitioners. The definition of "propaganda" is organised dissemination of information to assist or damage a movement.

4.10.2. The Committee finds that Politicians, including two former Chief Ministers, Officers of the MA, Officers in the Department of Trade and Industry and Officers in the Chief Secretary’s Office, including the former Chief Secretary, gave a considerable amount of time, consideration and advice to the Petitioners. A number of Officers and Politicians tried to help the Petitioners in their action against the MCA.

4.10.3. The Committee finds that the MA offered to test the stability of the vessel at no cost to the Petitioners. However the Petitioners refused to agree to the test for some time and threatened legal action against the MA.

4.10.4. The Committee finds that the then Minister for Department of Trade and Industry, Hon A Downie MHK, and Department Member, Mr L Singer MLC, both made inaccurate statements to Tynwald. The Committee find that the Department of Trade and Industry included inaccurate information in the briefing notes for November Tynwald 2003 to the Minister. As a result of the inaccuracy of the briefing notes the Committee concludes that in its view the statements made by the Hon A Downie MHK and Mr Singer MLC may have negatively influenced Tynwald’s view of the case at the time.

4.10.5 The Committee was concerned about the standard of minutes etc but has received an assurance from the Department of Trade and Industry (Doc 468) the Department now complies fully with the guidance within the Principles of Corporate Governance on the completion of Minutes at Department Meetings.

4.10.6. The Committee finds that on balance Politicians and a number of Officers responded extensively and sought to help the Petitioners. However, the Committee also finds that there was dissemination of information from the Department of Trade and Industry which was conveyed in a manner that was
detrimental and damaging to the Petitioners cause. The Committee finds no written evidence that this was intentionally meant to damage the Petitioners or that it was organised misinformation.

4.10.7. **The Committee recommends that:**

10 That the Government Code be amended to direct that all Departments/Boards and Offices keep a record of all Parliamentary Briefings given to Ministers and Members.

11 The Council of Ministers invite Mr A Downie, MLC, to apologise to the Court of Tynwald for the inaccurate statements (based on his briefing notes) made in Tynwald on 19 November 2003.

12 The Department of Trade & Industry gives consideration to issuing a formal apology to Mr and Mrs Spadoni for conveying inaccurate information to the then Minister Hon A Downie MHK

4.11. **The conduct of the MA undermined the Petitioners case against the MCA**

4.11.1. The Committee finds no written evidence to suggest that the MA undermined the Petitioners case against the MCA however there was evidence of continued communications between the MA and the MCA during the period of negotiations.