



Polar voyage: the vessel in Antarctica

Learning lessons from history

The historic voyage of the Crystal Serenity cruise liner through the North West Passage marks an important early test for the new Polar Code regulations. By Michael Kingston

Seattle Airport was an interesting palace to be on August 11, 2016, as I awaited a flight back to London after attending a best practices workshop on the impending Polar Code with some of the world's leading environmental organisations. As I waited in the Delta Airlines queue, Japanese tourists were checking in for a flight to Anchorage, Alaska to join the Crystal Cruises vessel Crystal Serenity for her voyage from Anchorage to New York. This was no ordinary cruise they were joining, however.

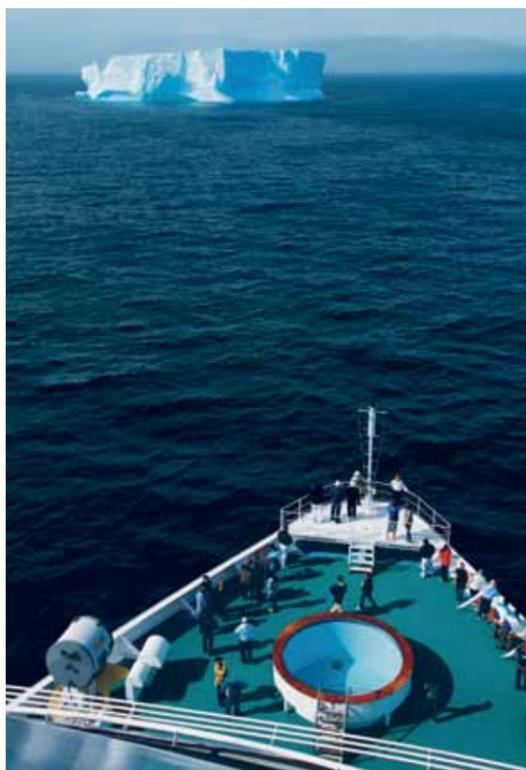
The Crystal Serenity is by far the largest cruise ship ever to sail the North West Passage carrying almost 1,700 passengers and crew. Prices have been reported to range from \$30,000 to \$156,000 per passenger for the 28-day voyage.

The transit is truly historic. The passage was only first transited in 1906 by Norwegian Roald Amundsen taking three years to do so. In the 18th Century the search for the passage was the 'Holy Grail' of the exploration world. For years, the British sought to conquer the route, most notably the 'Barrow Boys' who were a string of explorers commissioned by Sir John Barrow, Permanent Secretary of the British Admiralty. The Barrow Strait in the Canadian Arctic, as well as Point Barrow and the city of Barrow in Alaska, are named after him as well as many places in London.

The quest famously culminated in disaster in 1845 during the Franklin Expedition with the loss of both expedition ships which disappeared and all on board perished. Only in

2014 was Sir John Franklin's ship HMS Erebus discovered. The second ship, HMS Terror, captained by an Irishman, Francis Crozier, is still missing.

The Franklin mission failed because of the harsh environment and extreme conditions. Whilst ice has been melting at record levels, and technology has advanced, that does not negate the difficulties. It is therefore important the excitement of history does not distract both the Crystal Serenity passengers and her operators from the seriousness and



Pioneering: North West Passage breakthrough

magnitude of the risks involved.

As I looked at the passengers in Seattle my mind flashed back to a talk I gave in London on April 10, 2015 for the British Insurance Law Association: 'The Finalisation of the Polar Code: the Concerns and Contribution of the Insurance Industry'.

I had chosen April 10 deliberately as it was the 103rd anniversary of the RMS Titanic leaving Southampton. The disaster occurred in the early hours of April 15, 1912.

In the talk, I stated: "103 years ago today – if we were in the business of travelling to the United States, we would have boarded the Titanic in Southampton to great fanfare and excitement. We would think that we were in the safe hands of operators who knew what they were doing.

At this exact time we would be enjoying lunch in the dining rooms of the great ship a few hours out of Southampton heading towards Cherbourg, happy in the thought that the 'unsinkable' ship would get us to our destination so that we could go on about our business in the US.

However, in reality, we were in a pre-disaster phase, where total disregard for safety would cause the loss of 1,517 lives resulting in the introduction of the first Safety of Life at Sea Convention, and ultimately the development of the International Maritime Organisation itself."

I went on to say that, "I emphasise pre-disaster phase, because so often it is a disaster that raises the questions about the sense of some of the practices that lead to the disaster. So often we look back and realise that standards were incorrect, that

common sense did not prevail, and that human beings and the consequences of their actions were allowed to play too large a part in those disasters".

I further added: "In August 2016 it is planned to take the Crystal Serenity through the North West Passage with 1,000 passengers on board. Sir John Franklin is revered in history as a hero in glorious defeat. However, 75-year-old Captain Anders Backman, who is one of the most experienced ice captains in the world, and who has worked closely with the insurance industry in the development of the Polar Code says: "In my world Franklin does not deserve to be treated like a hero, I would prefer to call him being regardless of other peoples' lives". Bearing these comments in mind, and thinking also of the peril we would be in 103 years ago today as we approach Cherbourg on the Titanic in 'pre-disaster phase', in the absence of any salvage equipment or any ports, the owners of cruise liner Crystal Serenity, I would personally say, will need to do a lot of work to demonstrate how they would prepare a Polar Waters Operation Manual."

Under the Polar Code, which does not come into effect until January 1, 2017, it is necessary for operators to hold a Polar Waters Operation Manual that explains that they have a plan to deal with a worst case scenario in the conditions that may be encountered. Only then can an operator obtain a Polar Ship Certificate.

The operator must demonstrate:

1. Search and rescue capability, including a total loss of the vessel;
2. That equipment and crew are fit for purpose in the difficult conditions; and
3. They must make reference to an ice regime methodology that shows how their ship will deal with the ice in the area that is being contemplated and that methodology must be explained in their Polar Ship Certificate which will be issued by the Flag State where their ship is registered.

It is fair to say, and has been well publicised by Crystal Cruises, that they have been involved in intense pre-planning, liaising with the US Coastguard and the Canadian authorities. There is simply no room for error in such a transit with so many people on board in such a remote area. They will be supported by a Canadian ice breaker and are also in contract to be accompanied by the British Antarctic Survey vessel, RRS Ernest Shackleton which obviously is a back up plan for the transfer of passengers in the event of a loss of the Crystal Serenity in the middle of the Passage.



On deck: Room with a view

Anything less in planning would not comply with adequate pre-planning under the Polar Code and would, after January 1, 2017 result in the failure to obtain a Polar Ship Certificate - in theory - if the rules are applied correctly.

And applying the rules correctly is critical. Education about the Polar Code is now a priority so that the rules are applied correctly by operators, flag states, insurers, financial institutions and port state control. The reality at the moment is that there is a lack of understanding.

For insurers, who have a big role to play in the implementation of the Code, hull and machinery underwriters currently exclude voyages above 70N under the Lloyd's Institute Hull Clauses because of the dangers and difficulties involved. The Nordic Plan in Scandinavia contains similar exclusions, and P&I Club rules do not allow vessels to travel 'outside normal trading patterns'. Therefore, owners have to consult all insurers for Arctic operations. So, if the process works as it should, insurers will need to look in detail at the Polar Waters Operation Manual to see what it is the operator is intending to do, what crew are on board and what mitigating provisions have been put in place for emergency situations.

Having made my comments on April 10, 2015, it is important that I explain the inclusive contribution of Crystal Cruises and the world's cruise line industry in helping to finalise the Polar Code. Whilst I have not seen the pre-planning for this voyage and cannot comment on it specifically Crystal Cruises have engaged responsibly with the authorities and with recognised ice navigators. They participated in an important workshop organised by the cruise line industry in June 2015 regarding the interpretation of the Polar Code, for example. The cruise industry has also played a full part in the finalisation of the Polar Code. This is comforting because, according to the US Coastguard 200,000 passengers crossed into the Arctic on cruise ships in 2015

alone, and the cruise industry, prior to the new rules that are coming into effect, has been a matter of concern for many.

Crystal Cruises it has been reported is already taking reservations for a 2017 transit. Before looking to the second trip, it is important for Crystal Cruises to first harness for themselves and the cruise line industry the enormous win-win situation that they are in.

Their voyage is in effect a showcase for the hypothetical application of the Polar Code. They need to educate everyone about how they have prepared to show what responsible pre-planning is. Hopefully the conditions will be in accordance with pre-planning and everyone has the trip of a lifetime through the North West Passage. But if unexpected conditions arise they need to also show what a responsible operator they and their industry are in allowing the experienced and trained crew that are on board to be able to say "no, this is not safe, we do not go through".

And commercial pressure must play no role in that on board decision making process. Either way - going through or not - if this happens the historic application of the Polar Code in theory is the most important lesson to learn in this voyage. They and their passengers will be playing an enormous role in the protection of the Arctic marine environment and Safety of Life at Sea for future activity. A clear understanding of the rules and adherence to best practice will help to keep out rogue operators, and preserve the area that the passengers have paid so much to see.

It does seem Crystal Cruises have gone to great lengths. But the proof will be in the pudding. As the famous Irish and British politician Edmund Bourke famously said: "Those who do not understand history are doomed to repeat it." 

Michael Kingston is a partner in DWF LLP's Marine Trade & Energy Group.