



KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-173-2014
(Notice Of Readiness & Free Pratique)

► **Problem:**

Owners and charterers alike will know that there may be substantial delays between the time of arrival at load or discharge port and the time when free pratique is being granted. An owner who has completed a voyage and presented its ship for the charterer's disposal at a load or discharge port will, unsurprisingly, have no intention for bearing the risk of such delay.

► **Advice:**

Members involved in voyage chartering will be familiar the term WFPON - "whether in free pratique or not" - pursuant to which a valid notice of readiness may be tendered even in circumstances where free pratique has not yet been granted.

Even without having agreed such a term, and absent any provision to the contrary, the position at common law is if a ship "has apparently a clean bill of health, such that there is no reason to fear delay, then even though she has not been given her pratique, she is entitled to give notice of readiness". In such circumstances being granted free pratique is considered a mere formality.

However, as is often the case the position outlined above is a qualified one and provisions to the contrary do exist. One notable such provision is found in clause 6.3.3 of the BPVOY 4,

pursuant to which an unwary owner is liable to find himself deprived of an otherwise potentially substantial demurrage claim.

The starting point in clause 6.3.3 of the BPVOY 4 is that a notice of readiness will be effective only once free pratique has been granted. This is obviously not particularly attractive for an owner who has presented its ship for the charterer's disposal. However, if free pratique has not been granted within six hours after the tender of the notice of readiness the clause goes on to provide that lay-time, or time on demurrage, may nevertheless be triggered prior to the granting of free pratique. In order to achieve this; the master must issue a protest in writing "to the port authority and the facility at the port ("Terminal"). In the *Bow Cedar* ([2004] EWHC 2929 (Comm.)) it was held, albeit obiter, that the notice of readiness becomes effective on the master issuing the protest.

Thus, where a notice of readiness has been tendered but free pratique has not been granted within six hours, under the terms of clause 6.3.3 of the BPVOY 4, an owner who does not want to give its charterer waiting time for free; must ensure that the master protests in writing to the relevant parties as soon as possible.

The consequences of failing to do so can hardly be overstated: time will not count irrespective of its duration or the apparent injustice.