



# The bizarre case of Malta vs. Martin

# Accused

## of involuntary homicide

— How to Score an Own Goal in Diving Tourism

**After losing his girlfriend and a friend in a dive accident, Stephen Martin was first commended for his handling of the situation but later found himself accused of involuntary manslaughter by the Maltese authorities who issued an international warrant for his arrest. The case was eventually dropped after the dive community kicked up a storm, politicians intervened and BSAC came to his aid.**

Text by Rosemary E. Lunn  
Photos by Peter Bullen, Peter Symes and BSAC

In June 2014, Jeremy Coster, Alan Cranston, Nigel Haines, Larissa Hooley and Stephen Martin flew from England to Malta for a week's shore diving. It was an unremarkable holiday until Tuesday, June 17, when a tragic accident ended two lives and changed others forever. An excerpt from the British Sub-Aqua Club (BSAC) incident report read:

"A group of divers was carrying out a week's diving. They had already conducted five to six dives each over the two preceding days.

"The local weather conditions were not ideal for diving [at the initial site chosen by the group] so the group, on advice from a local dive centre, travelled to an area with more sheltered diving before deciding on one shore dive site where other divers were already conducting dives in what were

considered favourable conditions. The group entered the water and split into buddy pairs.

"Thirty minutes into the dive, which was conducted between 10 to 15 metres (32 to 49 feet), one diver was seen to be descending rapidly, and before her buddy could respond, another pair from the group descended and found the diver unresponsive in a depth of 35m. The pair conducted a controlled buoyant lift, and the diver's buddy surfaced shortly after.

"While the rescue pair commenced a tow of the diver towards an exit point, the diver's buddy gave in-water rescue breaths. During the course of the dive, the weather conditions had deteriorated significantly and surface conditions made exit from the water difficult and exhausting.

"Other divers from the group, who had surfaced earlier and

already exited, assisted to recover the diver and commenced CPR. A diver in the group alerted emergency services, and a rescue team arrived including a helicopter and rescue vessel.

"One of the rescue divers who had assisted with the controlled buoyant lift and tow



STEPHEN MARTIN

had considerable difficulty in exiting the water and was later taken to hospital. The other rescue diver, who had also assisted with the lift and tow, was not seen exiting the water. When it was noticed he was missing, an immediate surface search was conducted by the rescue vessel.

"The search located the missing diver on the surface; the diver was unresponsive. The diver was recovered and CPR attempts made. Both divers who received CPR did not recover and were pronounced deceased."

### Martin's account

At the time, Stephen Martin—Diving Officer for Brighton BSAC and a BSAC Open Water Instructor—had been diving 15 years. He had completed approximately 1,500 dives. The group, which included his girlfriend of five years, Larissa Hooley, opted to dive the popular route from Gozo's Inland Sea and exit the water at the Blue Hole.

Martin said, "We buddied up and checked each other's equipment. After we entered the water, we proceeded through the fissure and kept close to the coast at about 10 to 12 metres (32 to 39 feet). I was buddied with Larissa Hooley at the front of the group. The

The

BSAC





*With the inquest completed, any reasonable diver would believe that all the authorities involved would consider the case closed.*

others followed. About 20 minutes into the dive, my buddy made a sharp turn seaward, without warning, and descended sharply whilst still finning. I thought she must have dropped something and went to recover it. Nigel Haines and Jeremy Coster were immediately behind us, and followed my buddy down.

"Nigel Haines caught up with Larissa Hooley at 35 metres. She was blank-eyed and unresponsive. He, along with Jeremy Coster, conducted a 90-second controlled buoyant lift to the surface. When they surfaced, Larissa Hooley's regulator was out of her mouth and she was cyanosed. On the surface, I tried rescue breaths whilst Jeremy Coster and Alan Cranston got out of the water. I towed Larissa Hooley to the rocky shore. The sea state had become rough with about a one-metre (three-foot) swell, which made an exit difficult over the rocks, and exit through the Blue hole now impossible.

"Help arrived in the form of a German doctor. She happened to be amongst the tourists visiting the area. She tried to resuscitate Larissa Hooley and conducted CPR on her until the emergency services arrived, and declared her to be dead. Nigel Haines had seemingly been fine as he helped bring Larissa Hooley to shore but, as she was removed from the sea, we realised that he was no longer with us and, with his BC inflated, had drifted out to sea.

"Jeremy Coster and Alan Cranston attracted of a RHIB. It drove out and picked Nigel Haines up. He was brought ashore unconscious and was also found to have died."

## Standard procedures

As is normal in this situation, the police impounded key pieces of equipment. Some of it (cylinders and lead) had been rented from the local dive centre Maltaqua. The majority of the scuba equipment, including dive computers, GoPro cameras and footage, was owned by the diving party. To date (20 months post incident), the Maltese authorities have kept all of the equipment owned by Jeremy Coster, Nigel Haines and Larissa Hooley. It is not known when, or indeed if, it will be returned.

Martin and the rest of the divers naturally cooperated with the Maltese officials' inquiries. They then returned to the United Kingdom, aware that an inquest would be held to examine the deaths of Haines and Hooley. This is standard procedure in England and Wales where the cause of death is sudden, not known and unexplained. The incident was also reported to BSAC via an incident report form.

## Maltese inquest

Meanwhile in Malta, in the autumn of 2014, officials held a separate magisterial inquiry into the double deaths. Martin was not advised, nor asked, to take part in this inquiry, and this policy was also extended to the other divers in the party. In other words, none of the divers were given an opportunity to assist in the inquiry as one would expect, and they were therefore unable to accurately respond to the allegations.

The inquiry found, in Martin's absence, that he had been negligent because of the unorthodox dive pro-

file, he had not checked the weather conditions, and he had failed to keep a close watch on Larissa Hooley.

## UK inquest and case closed?

On 26 February 2015, the English inquest into the two diving deaths was held at Brighton and Hove coroner's court. Neither the coroner, Veronica Hamilton-Deeley, nor the Sussex Police had received a response from the Gozo authorities, despite their numerous requests for information on the case. (It is standard procedure for a coroner to adjourn an inquest if an active investigation is ongoing in another jurisdiction.) Neither she nor the Sussex Police had received a response to their requests for information on the case. (It is standard procedure for a coroner to adjourn an inquest if an active investigation is ongoing in another jurisdiction.)

## Cause: IPOs

The Brighton inquest heard that both deceased divers had suffered immersion pulmonary oedemas (IPO). The expert witness, cardiologist Dr Peter Wilmshurst, told the inquest that Hooley's was most probably spontaneous. Her reduced oxygen intake would have explained her rapid breathing and erratic behaviour. He then observed that Haines' immersion pulmonary oedema was probably caused through stress after taking part in an attempt to save Hooley. Hamilton-Deeley returned verdicts of accidental death on both Haines and Hooley.

With the inquest completed, any reasonable diver would believe that

Gozo's Bue Hole, here seen from above, is a spectacular and thus popular dive site



PETER BULLEN





*“The biggest problem with it [European Arrest Warrant] is that the British courts have no power to refuse them, or to consider the evidence or the lack of it. Under an EAW the prosecution does not have to present any evidence to the extradition court. It merely has to complete the paperwork correctly.”*

— Gerard Batten,  
UKIP MEP for London

all the authorities involved would consider the case closed. For the surviving divers and the families of everyone involved, it was now a time to move on and start living again, instead of existing and grieving. However, this was not to be.

### Arrested and handcuffed

“The first thing I knew about the Gozo prosecution case was on Tuesday, 7 July 2015, when two British police-man knocked on my door,” Martin recalled. “They briefly asked if I had been involved with two fatalities in Malta. When I confirmed that two of my friends had died in Gozo, they told me to get my passport. I was driven to the nearest custody centre, where I was placed in a locked cell overnight. The next day, I was hand-

cuffed and taken to London in large white prisoner van.”

The arrest, conducted just over a year after the fatal dive, was a complete surprise to Martin, given the verdict of accidental death issued by Brighton and Hove coroner’s court. In fact, Hamilton-Deeley, the British coroner, had commended Martin and the surviving divers for risking their lives trying to save Haines and Hooley.

It transpired that the Maltese authorities had not taken the same view as Brighton and Hove coroner’s court. Gozo magistrate’s court had issued a European arrest warrant; they wished to prosecute Martin because they deemed him the most experienced person on the dive. He was advised that he had been charged with involuntary homicide by the Maltese Attorney General. On Wednesday, 8 July 2015, Westminster Magistrates Court served Martin with a European extradition order to Malta.

At this point, the duty solicitor advised Martin to not agree to the extradition. If he had agreed to the extradition, Martin would have been flown to Malta within a couple of days and placed on remand, pending trial. By refusing extradition, it

gave Martin a breathing space of seven days to appeal against the extradition. At the eleventh hour, his paperwork was processed, and he successfully appealed for an extension to allow more time to prepare his defence.

Martin was bailed and electronically tagged, told to report to a police station three times a week, and observe a night-time curfew. He started to prepare his defence case.

“I was terrified,” said Martin. “I am not a gangster, just a scuba diver, who nearly died trying to rescue two friends. I couldn’t understand why the Maltese authorities were pointing the finger at me.”

### Warrant

The Gozo warrant stated that Martin had failed in his duty to generally observe the group. However, this was a typical scuba diving holiday, not a training course, and whilst Martin was one of the most qualified divers in the group and the only instructor present, he was not the group’s leader. There wasn’t one. Martin acted as a conscientious buddy on each dive.

The warrant also stated that Martin had failed to check the weather conditions before the dive. That day, the group were due to dive the Um El Faroud on Malta. Instead, they abandoned this dive precisely because of poor conditions at the wreck site, took photos of the dramatic sea state, ate an ice cream and discussed alternative dive sites.

The divers dropped by Maltaqua (the operation with whom they were diving) who suggested the group

Gozo’s Bue Hole, here seen from below the surface is a unique dive site which see thousands of divers each year



Dr Peter Wilmshurst

PETER BULLEN





Gozo's Bue Hole is situated right in front of the arch in the center of the image. It can be accessed via a swim-through from the 'Inland sea' which is located right behind the building on the right

take the ferry over to Gozo and dive the Inland Sea and Blue Hole. When the group arrived at this dive site, they observed there were divers in the water. After asking other divers about the conditions, they decided to dive after being told the conditions seemed fair for diving.

Furthermore, the Gozo warrant stated that Martin should have given first aid to Hooley whilst she was still underwater. Every diver, bar very new divers into the sport or non-divers, will know that this is a ridiculous, absurd and impossible course of action to take. It can compromise the airway, and frankly, attempting to do so just wastes valuable time.

It is drummed into divers that should a diver fall unconscious underwater, a controlled lift should immediately take place, conducted in such a manner that it won't impact on the safety of the rescuer(s). Once on the surface, positive buoyancy should be achieved by all parties, rescue breaths administered, the airway protected, and the alarm raised. All of these tasks were completed during Hooley's rescue.

The Gozo warrant stated that the dive profiles of Haines and Coster, who both went to Hooley's aid when she descended unexpectedly, showed an "unorthodox" fast descent (to 35m) and ascent rates. However, 35 metres in 90 seconds is quite reasonable and necessary during an emergency rescue, which was also confirmed by the British expert Dr Peter Wilmshurst who testified at the Brighton inquest.

Finally, the Gozo warrant stated that Martin had failed to check for unknown equipment faults. The group were diving their own scuba equipment. They knew exactly how it had been serviced and cared for, and comprehensive buddy-

checks had been conducted pre-dive. Other checks thereafter are not normally made, and this is standard practice and behaviour the world over.

### Calling in BSAC

At this point, Martin quite rightly turned to his training agency, BSAC, for support and assistance. As part of their annual membership, BSAC members receive a number of benefits. These include a monthly magazine and third party insurance.

Whilst criminal acts are uninsurable, criminal defence costs, especially for something like involuntary homicide can be covered by insurance. Martin thought the BSAC insurance policy included criminal defence costs.

However, it soon transpired that BSAC's insurance policy had changed sometime between 2007 and 2014, and this protection no longer existed. It is possible that the underwriters had pulled the criminal cover in 2007 because a new act came into being in the United Kingdom: the Corporate Manslaughter Act of 2007. The insurance industry was not sure of the implication of this act, and it caused a negative knee-jerk reaction amongst the underwriters.

### No insurance coverage

"Following lengthy negotiations, it is with regret that we have been informed by our insurers that the 2014-2015 policy does not provide cover for your criminal defence costs," stated Mary Tetley, BSAC Chief Executive Officer at the time.

It really looked as though Martin was fighting and funding his case on his own. What was equally worrying was that none of the 26,000 odd BSAC members had been updated about this change of



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insurance cover either. Many members thought they still had criminal defence coverage because this benefit had been advertised on the BSAC website until at least August 2015.

Understandably, BSAC members were not happy.

*"The big reason everyone and his dog is so excited about this is the fact that we had all thought we were covered for defence costs and we weren't and we are all going 'shit! That could have been me in Malta"*

— post on the Dive Forum

### Asking the public for help

Martin turned to the social media—specifically, The Dive Forum—contacted the local and national press, spoke to television reporters, and wrote to his local Member of Parliament, Sir Peter Bottomley. Martin was briefed that the MP would contact the Maltese High Commission in London to express concern over what would seem an excessive reaction to the emergency that had enveloped the divers and resulted in a failed rescue.

Just under a month after he was arrested, on Thursday, 6 August 2015, Martin was contacted by BSAC's Chief Executive, Mary Tetley, who assured him of pro-active help. This included the financial issues he faced, along with reviewing BSAC's insurance policy, which has always been a significant membership benefit.

### Fallout

Historically (since 1800), there have been close ties between the Maltese islands and the United Kingdom. Indeed, following the great siege in World War II, King George VI awarded the George Cross to the island of Malta, writing that the medal would "bear witness to the heroism and devotion of its people". Today, the George Cross is woven into the Maltese flag.

Following the shock arrest of Martin, British divers were unsure whether or not to consider continuing to dive Malta and Gozo. As news spread about his fate, Maltese dive centres also started to worry about the court case, as BSAC dive clubs cancelled trips. Resident Maltese divers were (quite rightly) disturbed by the whole process and the negative impact this case would and could have on the local diving industry, and British divers reviewed their travel plans.





### Trained to dive independently

The BSAC ethos is to train divers that can plan, run and execute safe independent dives. As part of their training, BSAC divers learn about all aspects of dive planning including charts, tides, boat handling, weather, gas blending, rescue techniques, oxygen administration, etc.

The idea is that a club, or a group of

*"Why should I be locked up because I am the most experienced diver or dive professional on an unguided dive, when another diver has a fatal medical issue underwater, and despite doing everything possible to rescue them, they die?"*

divers from a club, can run adventurous diving, or indeed, an expedition in remote locations because they are suitably skilled. Technically, this diving can be classed as "unaccompanied" because the group is

not being guided by a local guide.

The cornerstone to BSAC club diving is the Diving Officer or DO. Each BSAC

branch has a DO. They are responsible for all diving, training and water-based activities, including boats. They facilitate the club members diving. BSAC clubs like using Malta and Gozo for club trips because it allows them to train, nurture and mentor divers in these useful skills in benign (-ish) conditions that are similar to UK waters. Whilst the Mediterranean waters are warmer and clearer, they still have currents and waves similar to UK seas.

As the Martin case progressed, rumours began to spread that indicated the prosecution had come about because the group had been diving "unaccompanied". They had not dived with a local guide. This proved worrying to British divers.

Chief Executive Officer of the British Sub-Aqua Club (BSAC), Mary Tetley



ROSEMARY E LUNN



PETER BULLEN

### Legal costs funded

With the BSAC now providing GB£100,000 for the legal costs in his defence, things began to look brighter for Martin.

He said, "It is now two months since I was initially arrested and processed through the extradition process. Having little exposure to the law or police, this whole process has been very draining and occupied a great deal of my life. I realised a while ago that worrying just clouds your vision and makes you feel old. It does no good. With BSAC onside now, a lot of my worries have been allayed."

British divers continued to lobby their members of Parliament and European Parliament, the press was kept apprised of the situation, and a Facebook campaign—"We stand with Stephen Martin"—was launched. Officials from

the BSAC were in touch with the Malta Tourist Authority, whilst Martin's Maltese lawyer looked at getting the prosecution reviewed.

On Friday, 16 October 2015, the administrative court granted Martin leave to appeal against the extradition request. This hurdle was important because it meant the court thought there was arguable merit in some of his grounds for an appeal. A date was set. The hearing at the High Court in London would take place on Wednesday, 20 January 2016, where the appeal against extradition would be heard. If this appeal proved unsuccessful, Martin would be removed from the United Kingdom and taken to Malta no later than ten days later.

### BSAC goes to Malta

On Saturday, 10 November 2015,

BSAC's chief executive, Mary Tetley, and National Diving Officer, Sophie Hepstonstall, travelled to Malta to discuss the case with senior representatives of the Maltese authorities. The various meetings held gave BSAC the opportunity to directly express its deep concern over the criminal prosecution of one of its members (Martin) and to discuss the wider implications of the case and its potential effect on BSAC members.

Speaking ahead of the visit, Tetley said: "The resonance of Stephen's case among the UK and BSAC diving community is loud and clear and we intend to express this concern directly to the Maltese authorities."

Meanwhile, the Facebook campaign "We stand with Stephen Martin" continued to raise awareness of his case by directly petitioning Norman Hamilton,





the Maltese High Commissioner in London, and Peter Grech, the Maltese attorney general.

## Incredulity

The diving fraternity sat, watched and waited to see what would happen next. No one had ever expected the Maltese authorities to issue such ludicrous criminal charges. And divers asked the question: "Can anyone recall a criminal prosecution of this nature

previously, anywhere in the world?"—a situation in which the UK inquest found no wrong-doing, yet the country in which the fatal dives took place still wished to prosecute. To everyone watching, it seemed a bizarre decision.

One post on The Dive Forum read: "What I don't understand in all this is how the event could be deemed accidental by the UK coroner but then becomes auto-

matically categorised as criminal, based purely on another country's wild accusations. My personal opinion is that Stephen is in a horrible situation that has been wholly created by the Maltese authorities. It will do nothing bar damage the Maltese economy and make things really hard for one of our members."

## Role of the court expert

The Maltese legal system is very different from the British legal system. The Maltese police do not solely conduct the investigation. Instead, they appoint a "court investigating expert" as soon as an incident occurs, and that person can interview witnesses and suspects as part of the judicial process. Following the Martin fatal dive, a Gozo-based hyperbaric doctor, Dr Mario Saliba, was appointed as the court investigating expert.

This would seem to corroborate the stories that Saliba would turn up at the hospital or the police station following diving incidents, where he would record statements from the people involved in the incidents. Martin confirmed that he and the other members of the diving party were interviewed by Saliba in the immediate aftermath of the incident.

"I was terrified and crying," said Martin. "Dr Mario Saliba, who looks after the chamber on Gozo



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took a statement from me. He didn't advise me of my rights. He did introduce himself as a BSAC representative and said he was taking a statement from me for the BSAC Incident Report. I feel he misled me. He threatened to have me arrested because I could not find my medical certificate. I didn't know what would happen to me and wondered if I would end up on remand in Malta for an unknown period."

According to zoominfo.com, Saliba is a "specialist in diving medicine". He is listed as a "UK Sport Diving Medical Referee".

It is also believed that he is a BSAC Sport Diver. However, BSAC stated: "Dr Saliba is not a member of BSAC. He is an appointed medical referee for the UK Diving Medical Committee (UKDMC), which is an independent body of doctors with specialist diving medical training that provides medical advice to divers and training agencies, both professional and recreational, in the UK. The UKDMC appoint the medical referees on their own criteria and BSAC is not responsible for the appointment of medical referees. Dr Saliba is categorically not a

'BSAC representative'."

## Qualified

Although Saliba is not a member of the BSAC, nor a BSAC representative, it still appears he could be an appropriate advocate for scuba divers in this instance, because he does have an understanding of immersion pulmonary oedemas.

In April 2013, Saliba had published a paper entitled, "Immersion pulmonary oedema in a scuba diver", in the peer reviewed *Journal of the Malta College of Family Doctors*. At the

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end of the paper, Saliba published an acknowledgement thanking Dr Peter Wilmshurst, Consultant Cardiologist at the Royal Shrewsbury Hospital, United Kingdom, for his advice. Wilmshurst was the expert witness who spoke at the Brighton and Hove coroner's court. The same Brighton inquest that had heard that both deceased divers had suffered immersion pulmonary oedemas, one spontaneous, the other probably brought on by stress.

This raises several questions about this involuntary homicide prosecution:

- 1) Why did the Maltese authorities withhold information from the British Coroner and the UK police despite them formally requesting this data?
- 2) Why did the Maltese authorities take eight months to issue a European Arrest Warrant following their decision to prosecute?
- 3) Why didn't the Maltese authorities take into the account the Coroner's Report in February 2015?
- 4) Why is it alleged that Saliba represented himself as a BSAC representative when BSAC has confirmed that he is not?
- 5) Why is it alleged that Saliba pushed for this prosecution when he respected (in writing) the professional knowledge of Wilmshurst?
- 6) Why did Saliba feel that Martin had a case to answer when he (Saliba) had written a peer-reviewed paper about immersion pulmonary oedemas, and knew that there is no



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accurate way to predict whether or not a diver is at risk of developing immersion pulmonary oedema?

**Why?**

During the research of this story it was hoped that it was simply a case of misguided officials getting involved with something of which they had little or no knowledge. It is understandable how a non-diver hearing that someone had "failed to give first aid underwater" can think the resulting charge perfectly logical and reasonable. And the Gozo warrant stated this fact. However, divers everywhere understand that "failing to give first aid underwater" makes no sense as it is an impossibility.

**No further comment**

The Maltese and Gozo court officials, not understanding scuba diving, naturally relied on the advice of a local expert, who really ought to have provided his country with professional, impartial, accurate advice. The result: a professional who has done his fellow countrymen a disservice, a complete over-reaction by the Maltese authorities, and a potential move to get unguided diving stamped out in Gozo and Malta, with Martin being used as a vehicle to make this happen.

Upon reaching out to Saliba for comment, he responded that he had nothing to add over and above the contents of the report he submitted to the inquiring magistrate. As this issue went to press, the report was not made available to this magazine *and it hasn't been*

*"Who is really responsible if an incident occurs during a guided dive with a group of people (either known or unknown to me)? The local divemaster or less experienced instructor from the local dive centre, or me—a staff instructor with 20-plus years of diving and a few thousand dives under my belt?"*

*possible to ascertain precisely what has been stated, recommended and acted upon - and by whom.*

It is apparent that antipathies against the hyperbaric doctor exist in the dive community but in the pursuit of the truth one must see past these and also question the role of the Magistrate.

However, on 21 September 2015, he was quoted by the Maltese website "Illum" as stating: "The statistics show that over the last 10 years, we had, at the most, three fatalities a year. [Last] year [we] had three in one day and two so far this year. Between 2009 and 2011, there were no fatalities. Most diving fatalities are independent [diving unguided] but this year [the diving fatalities] were diving with dive shops. Considering [there are] above 100,000 dives on Gozo a year, [it] shows that [the] sport is very safe, provided [you] obey the rules of nature."

Saliba also told Illum that in addition to divers diving under the protection of dive shops, there are others diving alone, amounting to about 5,000 a year. Saliba was then asked by Illum if enough was being done to keep divers safe.

**GUIDED VS UNGUIDED DIVING**

Pete Bullen, a local Maltese dive guide, makes the following salient points about guided versus unguided or unaccompanied diving. His advice is excellent.

"Divers are taught from the word go that they need to seek local advice when diving somewhere new. Quite a lot of divers enjoy being guided, whilst many others prefer to organise and run their own diving plans.

"I see hundreds if not thousands of divers diving 'unaccompanied' every year, and in the main, they dive safely, have great holidays and many come back year after year. And it is that 'year after year' bit that makes the main difference.

"Reading local conditions, particularly during times of changeable weather, needs some local knowledge. Understanding that the dive site may be perfectly safe to dive now, but the weather conditions may well be less than optimal in 90 minutes, when the dive has finished, takes experience, as does knowing when to go ahead and dive where you are, when to call the dive, or change the dive site.

"I haven't done any deep statistical research on this subject, but living and working here, I'd suggest that if you are suitably qualified, familiar with the sites and local conditions, know how to read the weather forecast and understand the implications of a change in wind direction mid-morning, then hire a car, cylinders and lead weights, and go and have fun. Many of our 'unaccompanied' customers first came here as guided divers and only on subsequent visits did they go unguided.

"If, on the other hand, you are a recently qualified Advanced Open Water or Sport Diver and/or this is your first visit to the islands, then get someone local to show you around. The nice thing about diving Malta and Gozo is that it is small intimate groups. We don't herd divers about. Instead, we tailor the dive to your requirements. You'll see more, you'll visit sites you'd have never found on your own, and you stand a far greater chance of going home uninjured ... And if, during mid or high season, you turn up at a dive site and you are the only ones there, don't congratulate yourselves for finding a quiet site, ask yourself why aren't the locals diving it!" ■



# opinion

*This whole thing has done the Malta and Gozo diving industry a lot of damage. It is a wonderful place to dive.*

Divers in  
Xlendi  
Bay,  
Gozo



He said, "To ensure no death occurs, all independent persons must dive with someone qualified who is very familiar with the dive sites. Also all divers aged over 45 or 50 should possess a valid medical certificate from their doctor. Also there should be medically trained personnel with specialised equipment at popular dive sites for use by independent divers as dive centres already carry this equipment. An ambulance takes at least 15 minutes to arrive which can be 15 minutes too late." [sic]

## Pandora's box

Will bringing in legislation to make guided diving mandatory help diving safety on the Maltese archipelago? It might well prevent a couple of diving deaths. It will also probably alienate the 5,000 odd divers who enjoy being able to plan and conduct their own dive plans. And it should be noted, there is a world of difference between diving with a seasoned professional and one who has had less than six month's experience in the area. A green guide does not make for a safer dive.

## Rebuilding confidence

So what should the Maltese authorities do now to build confidence among visiting divers from other countries? Like it or not, Pandora's Box has been opened. The threat of being prosecuted for diving unguided needs to be removed and an appropriate announcement must be made by the Maltese authorities confirming this.

*"To ensure no death occurs, all independent persons must dive with someone qualified who is very familiar with the dive sites."*

— Dr. Saliba to 'Illium'

## Fear of arrest

British divers ask: "Why should I be locked up because I am the most experienced diver or dive professional on an unguided dive, when another diver has a fatal medical issue underwater, and despite doing everything possible to rescue them, they die?"

This is how unguided diving in Gozo and Malta is being perceived in the United Kingdom right now by many senior divers and BSAC Diving Officers. They are not looking for blanket protection here, just the assurance that common sense will prevail. Of course, if there is a case where a person is genuinely negligent, or if someone obviously sets out to kill another diver, then, naturally, they should be appropriately dealt with by the authorities.

## Who is responsible?

Secondly, the Maltese authorities need to confirm where the buck really stops when a diver opts for guided diving.

To apply the rationale of the "evidence" in the warrant, advanced divers could find themselves being held responsible for the dive guide as well as the rest of the group, when officially on holiday and not "diving at work". And British divers are not the only ones to apply this thought process, several Maltese dive centres are also interpreting the warrant in this manner.

All dive professionals and instructors know they have a moral responsibility to assist other divers when they are in trouble. However, when they are on holiday, paying to dive for fun, they should not be

held legally responsible for everyone in the group.

The diving community needs to have timely, clear clarification issued by the Maltese authorities confirming that the responsibility rests with the local dive centre when the services of local guiding is taken up, and not with the most experienced diver or instructor on the dive.

Thirdly, the Maltese authorities need to appoint and announce a "court investigating expert" that is respected by the community. They must be professional, knowledgeable and have integrity. After speaking with a number of divers, there is the strong impression that Saliba is a good hyperbaric doctor, but he is not respected by the community. Regrettably, many see him as a tainted court investigating expert because of his conduct in the Martin case.

## The end game

On Friday, 8 January 2016, Martin's case had an initial court hearing in Gozo. The judge demanded an explanation from the Maltese Attorney General as to why standard disclosure procedures had not been followed, because key documentation had been withheld by the Maltese authorities. Neither Martin, nor his lawyer on Gozo had been given sight nor a copy of magisterial inquiry report and the "court experts" report, and no reason had been given for this action.

The Court moved to Chambers where it was discussed whether the proceedings should be suspended—and whether an expert should be appointed to report on Saliba's competence and qualifications. The case was re-scheduled to be heard on Monday, 25 January 2016, five days after Martin's extradition appeal

hearing in London.

Meanwhile, four days later on Tuesday, 12 January 2016, the BSAC issued a statement:

"This morning BSAC's Chairman, Chief Executive and National Diving Officer met with the Attorney General of Malta to discuss the Stephen Martin case ... Following BSAC's last meeting in Malta in November regarding Stephen's case, we have continued to work with the Malta Tourism Authority to secure a meeting with the Maltese Attorney General.

"It was a very frank, open and direct meeting lasting 1 hour 40 minutes in which we questioned the strength of the case against Stephen Martin. We very firmly explained our dismay at this case ever being brought against Stephen. We believe there is a complete lack of evidence to support it and have questioned all aspects of this case.







*"The support and advice I have received from divers of all agencies and all countries has been truly outstanding and we all deserve to learn from this sorry situation."*

— Stephen Martin

"While the Attorney General listened to our representations and views, he explained procedurally he is unable to withdraw the case at this time."

### Case dropped

A mere six days later, on Monday, 18 January 2016, Martin's lawyers were advised that all charges had been dropped by the Maltese authorities, bringing an end to a horrific nightmare for

Martin, who could have faced up to ten years in prison if he had been found guilty in Malta.

Later that day, BSAC Chief Executive Mary Tetley issued a statement: "First of all, I would like to extend our sympathies from all at the British Sub-Aqua Club to the families of Larissa Hooley and Nigel Haines. This was a tragic accident and Stephen is among the many who are still grieving their loss. I would like to

thank the Malta Tourism Authority for facilitating the crucial meeting with the Attorney General. The decision today brings to an end the horrendous ordeal which Stephen has suffered since he was charged, and we are both delighted and relieved for him."

### Charge bizarre

Martin's solicitor in the United Kingdom, Edward Elwyn Jones, described the charge as "bizarre"

because it was not at all clear how the Maltese authorities proposed to prove that Martin had actually caused the deaths of Hooley and Haines. He said: "It is rare for an extradition request to be withdrawn. Often when they are, it is as a result of lobbying outside the courtroom, and BSAC are to be commended for the work they have done to highlight Stephen's plight at the highest level."

### Martin's statements

"I am overwhelmed," said Martin. "This has been an utter nightmare for me, and I am just so relieved it is over. I feel I can finally start grieving for Larissa and Nigel, I just can't keep back the tears. I would like to thank everyone who has supported me over the last 12 months. I have been overwhelmed by the support of divers in the UK and worldwide and for all the efforts that have been made on my behalf to get these charges overturned. BSAC have also been really fantastic. It's a great example of how they look after their members, and I can't thank them enough.

"I am not bitter about this. Just very angry and very let down at being blamed for two people who died because of medical reasons. One of the divers that perished was my girlfriend of five years.

"I thought I could get some kind of closure after the inquest in Brighton, but it hasn't happened.

BSAC clubs like using Malta and Gozo for club trips because it allows them to train, nurture and mentor divers in these useful skills in benign (-ish) conditions that are similar to UK waters



PETER SYMES

I don't think I'll ever forgive myself for what happened to two of my friends. Would I swap places with the perished? Yes. In a heartbeat. "I have not dived a great deal since the incident. The first time was in August 2014. Since then I have concentrated on teaching. I am spending my time training new divers, and taking them for their first dives in the sea.

"This is a hollow victory. This whole thing has done the Malta and Gozo diving industry a lot of damage. It is a wonderful place to dive. I must do something to try and help promote the islands. I plan to go back in the summer and do a memorial dive and lay a plaque in the water.

"I also want to put something back to thank all the divers who have supported me."

### Acknowledgements

Martin would like to thank his legal teams both here and in Malta for believing in him and vigorously pursuing justice for him. He is enormously grateful to Malta's PDSA and Britain's BSAC who have supported him and lobbied Maltese authorities on his behalf, and the support of the Facebook group "We stand with Stephen Martin".

Martin intends to return to Malta in the near future to show his support to the diving centres on Malta who have been adversely affected by the decision to charge Martin and the subsequent boycott by many British and Irish divers. More details will be made available in due course.

