

2016/17
MODULE 1

AN INTRODUCTION TO YACHT BROKERAGE



DIPLOMA IN Yacht Brokerage

Supported by



Camper &
Nicholsons
International
YACHTING SINCE 1782



Boatshed.com
INTERNATIONAL YACHT BROKERS



NOTICES

When referring to personnel in this training module the author has generally used the term 'he' on all occasions. The use of the masculine gender is for convenience only and is not intended to convey any bias, discriminate against or offend female readers or students in any way.

The contents of this module are purely the opinions of the author. Students are encouraged to read additional material where available to enhance their knowledge and to gain a cross section of opinion.

Rules and regulations vary from country to country. The author has based this training module on English Law and regulation.

The information contained in this training material is for general information purposes only. The information is provided by Marine Publications International Limited and/or the Maritime Training Academy Limited and while we endeavour to keep the information up to date and correct, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or correctness with respect to the training material or the information, pictures, graphs, diagrams or related graphics contained in the training material for any purpose. Any reliance you place on such information is therefore strictly at your own risk. In no event will we be liable for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising out of, or in connection with, the use of this training material.

MPI Group, as a body, are not responsible for any opinions expressed in this module by contributors. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of MPI Group.



BIOGRAPHY

Ian Biles

Master Mariner, BEng(Hons), MA, CEng, CMarEng, DipMarSur, RYA Yachtmaster (Ocean), Eur Ing, FNI, MRINA, MIMarEST, MRIN, MSNAME, MIIMS, MSCMS, MHCMM, AMS (SAMS), MEWI

Ian started sailing with his father at the age of 12 and as a result went to sea upon finishing school. He sailed worldwide for 13 years on a range of commercial ships spending his leave sailing yachts around the United Kingdom and in the Mediterranean. Throughout this time, Ian studied for various qualifications passing his RYA Yachtmaster (Ocean) Certificate in 1982 and Class 1 (unlimited) Master Mariner Certificate in 1984.

In 1988, Ian was recruited by Shell International Marine who sponsored him to return to university and study for an Honours degree in Naval Architecture. He went on to take a Master's degree in Business Management.

Ian began his own marine surveying and consultancy business in 1992. The company developed offering technical advice and services to Owners, Operators, Managers, Banks and Insurance Companies in both the leisure and commercial marine sectors.

Ian is probably one of the most qualified marine surveyors in the business.

CONTENTS

1. AN INTRODUCTION TO YACHT BROKERAGE	5
What is a Yacht Brokerage?	5
The Structure of the Yacht Brokerage Industry	6
2. YACHTING SAFETY	13
The Flag State	13
The Maritime and Coastguard Agency (MCA)	14
The Marine Accident Investigation Branch	16
The Recreational Craft Directive	16
The Classification Society	17
Yacht Racing Organisations	18
Other Organisations and Schemes – RNLI, RYA, BSS	18
3. THE PURCHASE OF A YACHT	19
Finding the Right Type of Yacht	19
Broker's Listing	19
Listing the Yacht	20
Inspection	20
Negotiation and Contract	20
Survey	21
Completion and Title Transfer	22
4. THE LAW AND YACHTS	23
Merchant Shipping Legislation and Yachts	23
Registration	23
International Tonnage	24
Load Line	25
Collision Avoidance and Rules of the Road	26
Marine Insurance	26
The Yacht Broker and Civil Law	26
5. HEALTH AND SAFETY FOR THE YACHT BROKER	27
The role of common sense for the Yacht Broker	27
Preparation	27
Location and Communications	28
Access and Use of Ladders	28
Sea Trial	28
6. CUSTOMER RELATIONS AND COMMON COURTESY	29
7. BROKERAGE COMPANIES AND ORGANISATIONS	30
Sole Trader	30
Partnerships	30
Limited Liability Companies	30
Management of a Brokerage Company	31
Money Management	32
Sales and Marketing	32
Trade and Professional Bodies	33
8. THE ESSENTIAL RESOURCES FOR A YACHT BROKER	34
Technical Resources	34
APPENDIX 1 – BRBA CODE OF PRACTICE	36
APPENDIX 2 – BRBA BOAT BUYER'S GUIDE	41
9. STUDENT ASSIGNMENT	43

LEARNING OUTCOMES

On completion of this Module you should:

- Define what is a yacht or small craft
- To have an understanding of the range of different organisations which fulfil the different safety functions
- To have an understanding of a typical sale and the purchase process
- To have a general understanding of English Law in areas where the broker will be involved
- To understand the importance of health and safety for the yacht broker
- Understand the importance of good relations
- To have an overview on the different types of brokerage companies and their advantages and disadvantages
- To reference sources of information

1. AN INTRODUCTION TO YACHT BROKERAGE

The primary purpose of this first module is to introduce the reader to the many aspects that collectively make up what can be referred to as the yacht brokerage industry. The module is intended to be general in its nature, that is to say it will touch upon many different topics and cover none to any great depth. For readers who are familiar in whole, or in part, with the yacht brokerage industry much of what follows will be familiar. However, all of the following has been prepared with the yacht broker and retailer in mind and therefore should provide some insight into their role and the work they are likely to do.

What is a Yacht Brokerage?

The first question that needs to be addressed is exactly what is a yacht or a small craft? Strictly speaking there is no formal definition of such a craft as designation often relates to the function to which the vessel will be used. However, for the purposes of this module a yacht or small craft is taken to mean any vessel whether commercial or private pleasure that does not carry passengers.



A small wooden sailing dinghy and a large modern motor cruiser

For this module the author has drawn mainly on his experience of the United Kingdom yacht industry. Whilst this is an industry that has been established for over a hundred years it is not meant to imply that this is the only way for an industry, particular parts of the industry or indeed individuals to behave. A study of the United Kingdom model will be applicable, in part, to much of the world. However, there are also significant differences (cultural, legal and ethical) between countries and the student would be well advised to seek clarification of detail for different countries (applicable to the individual) as appropriate.

The Structure of the Yacht Brokerage Industry

As with any industry grouping there are many different parts involved. The following overview of the different functions of the industry is not necessarily exhaustive or mutually exclusive. Frequently there is a significant cross over between different parts of the industry with individuals often fulfilling more than one specific function.

The designer

All waterborne craft need to start somewhere and invariably it is in the mind's eye of the designer. Such an individual may be an enthusiastic amateur who dreams of building his own yacht from scratch or it may be the senior designer in the design office of a design house or a production yacht builder.

It is the designer's role to come up with the initial concept of what the yacht is going to look like and what it is going to achieve. Clearly the design requirements can vary enormously from that of a round the world ocean racing yacht to a small robust harbour workboat.

When considering design it is not just the exterior "styling" that is considered i.e. what it looks like when on the water, but also the space utilisation and ergonomics of both the internal and external spaces.

Depending upon the particular designer, his role may be to develop the concept that is then passed to a Naval Architect to translate to a set of functional plans or it may be to develop the entire concept from idea to reality. Design can be artistic or functional always depending upon the intent behind the original idea.

Having developed a set of pictures and plans that represents what the yacht is going to look like the designer may now turn to somebody to translate those plans into a physical reality.

The naval architect

The Naval Architect is the person who generally converts the idea of the Designer into a set of drawings and specification from which the craft can be built. Often the Designer and the Naval Architect will be one and the same person but this is by no means exclusively the case.

Naval Architects tend to work with numbers. They define the structure of the yacht in terms of its physical strength, its performance in terms of speed and power and its degree of stability i.e. just how well it will stay upright. The work will generally involve input from others such as the Rules of a Classification Society, national (such as the British Standards Institute) or indeed international (the International Organisation for Standardisation) minimum requirements. In some cases (normally small craft used for commercial purposes) there are statutory regulations to comply with whilst for leisure only craft there are statutory European Regulations that relate to the standards for a vessel sold within the European Union.

The end result of the Naval Architect's work is generally a set of detailed drawings which show all the parts of the yacht, both structure and systems, together with a technical specification which details the functional and/or performance requirements of every part of the yacht. With this information, the yacht moves one step closer to completion.



A Naval Architect's Office

The builder

The Builder is the entity that takes the plans of the Naval Architect and converts them into the finished vessel.

As for the Designer a yacht builder can vary from a home build by an amateur to a production yacht forming one of a number of virtually identical vessels. The builder will take the plans and starting from nothing will physically produce the yacht from a range of different materials and sub systems.

The actual building process will vary depending upon the type of material from which the yacht is to be built. However, generally the builder will produce the hull, install major equipment inside, fit the deck and superstructure and then outfit both inside and outside.

As one might expect, building is a crucial time in the life of the yacht. As for all things, the amount of time, effort and expense that goes into the building of yacht will determine the quality. This 'in turn' will translate both into the perceived value and also to the degree of difficulty in selling the yacht in the future.

In the yacht industry of today, yacht building or yacht production has developed into a very advanced and sophisticated sector of the industry turning over many millions of pounds and producing many thousands of boats every year. However, this does not mean that all sea going vessels built today are mass produced. Many individuals commission customised boats whilst other build at home from scratch or purchase the basic hull and complete the craft as a home build. In reality the market is as diverse as the mind of any individual.

The sheer diversity of craft is one of the problems that a broker is faced with on a daily basis. There are many thousands of different types of yacht built by a huge range of different builders over a long period of time. Some are well established with good reputations, some are well established with bad reputations, some only ever build one or two craft. The practising broker needs an appreciation of the degree of diversity whilst recognising that they can never know everything there is to know about all the different yachts.

Having built the yacht, the next step is to find somebody who desires the particular vessel sufficiently in order to buy it.



Several different types of builders' boatyards

The yacht broker

It is the yacht broker's task to bring the person selling a boat, whether new or second hand, and a prospective purchaser together in such a way that a deal can be struck and the boat Ownership transferred.

The yacht broker will generally have been approached by a potential vendor (the seller of the yacht) and will establish the details of the yacht in terms of its physical dimensions and material description. It is his job to present the yacht in the best possible manner in order to attract potential buyers to come and look at it. In doing this the yacht broker will generally establish the title of the yacht i.e. whether or not the vendor is the legal Owner with the right to sell and he may also act as the Owner's agent in arranging for viewing and negotiating the sale.

In the retail environment the yacht broker represents the builder or the builder's sale organisation and will be selling a boat that is new and the details of which are (or should be) well known to him.

It is important to remember that the broker represents the interests of the vendor and not the buyer. Therefore, the broker will be focused on ensuring that the price paid is as high as possible as this serves the interest of his client. Frequently, although not exclusively, the broker will only be paid (the commission) on successful completion of a sale and this is something that can lead to potential problems if it is not fully appreciated at an early stage.

It should also be remembered that the broker is not a technical expert. Whilst many good brokers have extensive knowledge of types of boats and their particular advantages and disadvantages as well as excellent knowledge of the various physical aspects of a boat, it is not their job to be a technical expert. Sometimes this can lead to problems when a broker finds out from a potential buyer (via a survey report) that the yacht he is offering for sale is not all that he believed it to be or when defects are identified with a new boat of which he was unaware.

As stated previously it is the broker's role to represent the best interests of the vendor, whether this is the Owner of a private yacht or a builder.

As with other parts of the yacht brokerage industry, brokers can work as small companies (one-man bands) or form part of a very large company with many employees.



A yacht broker's office in a large marina

The owner

In effect, it is the Owner who is the driving force behind the whole of the yacht brokerage industry. Without Owners there would be no need for any of the other functions. Fortunately, however, there are many Owners with the desire to purchase a yacht or small craft in order to get afloat.

As with all things in the yacht industry there is a huge range of differences between Owners. Some are very wealthy and buy luxurious yachts costing millions whilst some will go yachting on the smallest of budgets. In any event, one thing of which the broker can be certain is that the Owner will generally be totally in love with his boat. Boat Ownership is about passion and the prospective broker needs to understand that what might appear to be an ugly little tub to him is in fact a dream boat to the person wishing to buy it.

Owners need not be individuals. The legal title holder could be a company (body corporate) or a finance organisation that has a contract with an individual (or company) such that the finance organisation remains the legal Owner until such time as the loan for the craft has been repaid. In any event the broker needs an appreciation that the Owner may not necessarily be the person or organisation that represents themselves to be so.

The finance organisation

As yachts have become more and more luxurious and the cost to buy has increased, it has become far more common for banks and financial institutions to lend money in order for an Owner to purchase the yacht. Loans normally take one of two forms, secured and unsecured.

An unsecured loan is in effect a contract between the finance organisation and the Owner and does not specifically concern the craft. The finance organisation lends the money to the Owner who, in effect, promises (in a contract) to pay it back. Therefore, in the case of an unsecured loan the lender is generally not interested in whether the craft is purchased or not. These types of loan were common up until 2009 but with a significant slowing down of the world economy and many banks having problems with bad debt (a small proportion of which would have come from the yacht industry) such loans are not quite so readily available these days.

A secured loan, however, means that the lender takes a charge (in effect takes legal title of the yacht) on the craft using a contract. The lender agrees to loan the purchaser the money to buy and use the yacht subject to a range of terms and conditions (normally including repayment terms, interest and sometimes insurance).

As a result the finance organisation will sometimes need an independent opinion as to the value of the yacht as the physical value of the craft is the security against which the money is lent. Once again this moves into the territory of the broker. Frequently a surveyor who carries out a condition survey will be asked to do a valuation and indeed this is common practice. However, caution is needed here. It is the broker who sells the yacht and, therefore, by definition it is the broker who knows, as a matter of fact, what any particular boat was worth at the time of sale (the sale price often being an item of confidential information between vendor, purchaser and broker). This does not mean that a valuation done by a surveyor is necessarily wrong, but it does mean that how the valuation is achieved and what it represents potentially becomes very important.

The insurance company

Having purchased a yacht, on most occasions the Owner will wish to insure it. In doing so there are two basic types of insurance that will be needed.



The Lloyd's of London Building

The first is Hull and Machinery insurance. This is the term used to describe the insurance that covers the physical material of the yacht, the hull, systems, engines, rig, sails, furnishing and equipment that make up the particular yacht.

The second type of insurance is liability or third party insurance (often call third party liability insurance). This insurance protects against damage done by the boat to other Owner's boats or to other people and/or their property.

Neither type of insurance is compulsory for pleasure craft navigating on the high seas. However, third party liability insurance is compulsory in some countries and also in certain circumstances in this country, e.g. for inland waterways in England under the Boat Safety Scheme.

As with all other aspects of the yacht brokerage industry the range of insurance available to an Owner is great. Insurance is normally purchased through an insurance broker who, like the yacht broker, is acting on behalf of his client (the buyer of the insurance). Insurance can come from traditional sources such as Lloyd's of London or from insurance companies. The insurance is a contract between the Underwriter on behalf of the insurance interest and the insured. Marine insurance is a special type of contract coming under the Marine Insurance Act that is covered in more detail in a later module of this course.

The insurance will involve the Owner paying a sum of money against the probability of an accident happening that involves the yacht.

Ultimately it is the Underwriter who pays the bill when there has been an incident that leads to damage, provided the incident and damage are properly covered by the insurance.



One example of yacht damage

The yacht surveyor

As with the previous groups mentioned, the yacht surveyor comes in many shapes and sizes. Some may specialise in particular sectors of the market e.g. inland waterways craft or wooden yachts whilst many remain generalists providing an independent service to their clients.

Many surveyors operate as one-man bands, some operate as small companies or partnerships and some operate as part of a franchise. Whatever the particular method of operation, in all cases it is the knowledge, expertise and attitude of the individual undertaking the work that differentiates the excellent surveyor from the average or poor.

It is important to remember that the surveyor works on behalf of the prospective purchaser and so he is, in some respects, on the other side of the negotiating table from the broker.



Survey conditions are not always perfect

Moorings and the marina

Having purchased the boat, an Owner will need somewhere to keep it. For smaller craft that can be stored on trailers they may be kept close to the Owner's home or in a land based storage facility. However, for larger craft this will often involve finding a berth, often at a marina.

The types of moorings available vary considerably. Many of the large and well established marinas provide extensive facilities with alongside mooring, water, electricity, rubbish disposal, toilets and showers, restaurants, chandlers, repair facilities and security etc. However, this is by no means the only type of mooring available to the boat Owner. Moorings are available between piles or "trots", on swinging moorings where the yacht is allowed to weather vane, moorings where the yacht is secured bow and stern and some where the mooring dries out between tides leaving the craft high and dry. Some yachts may be moored "Mediterranean" style, anchored by the bow with the stern next to the quayside.

Marinas may also offer lift out facilities for storing yachts ashore over winter for repairs and maintenance.

In some areas where marina berths are scarce and the berths are owned rather than rented the broker can also play a role in providing berths for new Owners.



A large marina and a mud berth

Other service providers

In addition to the above groups that operate within the yacht brokerage industry there are also numerous other service providers that a yacht broker will come across during the course of his work. These include sail makers, mechanics, boat valets, repair yards, riggers, chandlers, yacht charterers, sailing schools and others.

For the yacht broker other service providers can provide a valuable source of information and developing a network of contacts with a wide range of people within the industry will always be an asset.

2. YACHTING SAFETY



As a general rule, there is little positive regulation of pleasure craft in the United Kingdom. However, this does not mean that yachts are completely un-regulated and there are a range of rules some compulsory, some voluntary with which craft need to comply.

In terms of yacht safety there are a range of different organisations which fulfil different safety functions and these are detailed below.

The Flag State

The Flag State is the term used to describe the country to which the craft belongs. In commercial shipping terms this will mean the country where the ship is registered. However, in the United Kingdom registration (i.e. registering the title to the craft with a government) is not compulsory for leisure craft. Some yacht Owners choose to register their yachts fully under the Flag State or in the UK some yacht Owners with a smaller vessel register their yachts on a special small craft register but, as already stated, this is not necessarily compulsory for pleasure craft. Whilst this might initially appear surprising, it is important to remember the tremendous diversity of craft. Registering a superyacht would clearly be an obvious thing to do but should there be a requirement to register every windsurfer, canoe and sailing dinghy? The question of compulsory registration for leisure craft is a debate that has been carried on for several decades and no immediate changes are foreseen in the United Kingdom.



Red Ensign on the stern of a yacht

In addition to providing registration, the Flag State also sets out the rules and regulations with which the government of the country require craft to comply. Generally at an international level the International Maritime Organisation (IMO), part of the United Nations, works to establish minimum acceptable standards for commercial craft on a worldwide basis. However, pleasure craft are normally expressly excluded from such requirements. Even though the IMO works to establish such standards they do not have any powers to force any particular country to embrace the regulations. It is left to the government of each individual country to introduce regulations through national legislation which the Flag State believes satisfies the IMO requirements. Clearly, this can lead to different interpretations and differing standards. Furthermore, having set the standard, the Flag State then needs to police the standard that it has set. To do this many Flag States have marine surveyors who work as government employees to keep a check on the craft registered with that flag. Once again, standards can vary enormously with some countries having a fully developed survey and reporting organisation and some having virtually nothing.

Generally private pleasure yachts of less than 400 tons do not have to comply with many of the regulations with the exception of rules such as the International Regulations for Preventing Collisions at Sea 1972 and the Safety of Life at Sea (SOLAS) Chapter V. However, the exact requirements do vary from Flag State to Flag State. Of particular importance to note here is that in many countries there is no legal requirement for a yacht to be built to any particular standard or to carry even a minimum amount of safety equipment. In the United Kingdom for example there is no statutory requirement for a yacht used only for private pleasure purposes to carry any sort of fire fighting or lifesaving equipment. Another way of putting this is that it is perfectly acceptable to go to sea burn or drown yourself provided it is for pleasure purposes only!

As already mentioned most Flag States have organisations that act as the controller of the standards of ships and small craft in their territorial waters and/or registered in their country. In the United Kingdom this function falls to the Maritime and Coastguard Agency.

The Maritime and Coastguard Agency (MCA)

The MCA, as it is commonly known, is an executive agency of the Department for Transport (DfT). As an executive agency it operates in many ways like an independent company, but the MCA is in effect the maritime police force for the United Kingdom.

The Maritime and Coastguard Agency is responsible for:

1. Developing, promoting and enforcing high standards of marine safety.
2. Minimising loss of life amongst seafarers and coastal users.
3. Responding to maritime emergencies 24 hours a day.
4. Minimising the risk of pollution of the marine environment from ships and, where pollution occurs, minimising the impact on UK interests.

The Maritime and Coastguard Agency sets appropriate safety standards for the Inspections & Surveys of UK Flag vessels in order to ensure that they meet high safety standards. The MCA carries out port state control of non-UK ships, investigates and prosecute breaches of merchant shipping legislation and develops and sets ship and seafarer standards through legislation, Marine Notices and Codes of Practice.

In the UK, whilst private pleasure craft are unregulated, numerous categories of yachts are regulated as soon as they become involved in any sort of commercial venture. The regulations that exist are prepared by the MCA and can take a number of forms. The traditional route was for an Act of Parliament to be set up and this in turn gave rise to Statutory Instruments that were the technical detail that went in support of any particular requirement.

Vessels operating commercially under the British Flag or in British Waters must comply with the Merchant Shipping Regulations or an MCA Code of Practice. See these below.

Yellow

The Code of Practice for the Safety of Small Commercial Motor Vessels.

Blue

The Code of Practice for the Safety of Small Commercial Sailing Vessels.

Brown

The Code of Practice for the Safety of Small Workboats and Pilot Boats.

Red

The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure operating from a Nominated Departure Point (NDP).

In addition to these four Codes there are also two others that are not included within the Certifying Authority framework (but are included here for the sake of completeness).

LY2 and LY3

The Large Commercial Yacht Code.

Black

Code of Practice for Vessels Engaged in Oil Recovery Operations.

The Code Vessel Safety Branch, located at MCA headquarters in Southampton, provides policy, interpretation and technical advice on all Codes of Practice for Commercial Vessels. Codes newsletters are used to help distribute useful advice.

In addition to these codes the MCA have published a guidance document that seeks to harmonise the different codes as Marine Guidance Note MGN 280 (M) Small Vessels in Commercial Use for Sport or Pleasure, Workboats and Pilot Boats – Alternate Construction Standards.



The MCA has a range of surveyors, either nautical, engineering, naval architecture or fishing and some of these surveyors undertake the inspection work necessary for the implementation of code requirements. However, the MCA delegates part of its inspection role to third party organisations known as certifying authorities. These certifying authorities are organisations that undertake the inspection work on behalf of the MCA.

Certifying authorities

Currently there are 11 certifying authorities in the United Kingdom that are approved to carry out code compliance survey work on behalf of the MCA. The approved organisations are either Classification Societies, professional organisations or private companies. The list of organisations approved by the MCA to carry out inspection work is published in Marine Information Note MIN 514 (M).

1. Bureau Veritas (BV)



7. RINA UK Ltd



2. Burness Corlett –
Three Quays



8. The Royal Yachting
Association (RYA)



3. Det Norske Veritas (DNV)



9. Seafish Industry Authority



4. International Institute of
Marine Surveying (IIMS)



10. The Society of Consulting
Marine Engineers and Ship
Surveyors



5. Lloyd's Register EMEA



11. Yacht Designers and
Surveyors Association
(YDSA)



6. MECAL Ltd (Marine Engineers
Certifying Authority Limited)



For a yacht or small craft requiring a code compliance certificate, the Owner applies directly to the organisation of his choice for his craft to be surveyed. For this service the organisation selected will charge a fee and a nominated surveyor will attend the yacht to carry out the survey. Depending upon the organisation chosen the actual approach to the survey may differ but in all cases the subject matter for the survey will be the same as detailed in the code. Subject to the craft complying with the code, a certificate of compliance is subsequently issued.

For all craft where either regulation or codes apply, failure to adhere to the requirements can lead to prosecution which the MCA carries out through its enforcement division (not through the certifying authority).

For a yacht broker working in the commercial craft area of the industry it is vital that they possess an understanding of the requirements of the regulations and the methods by which yachts are certified.

In the event of an accident involving loss of life or environmental pollution, at some stage the MCA may become involved. There is, however, one other government organisation that is involved specifically in the investigation of accidents. This is the Marine Accident Investigation Branch (MAIB).

The Marine Accident Investigation Branch

The MAIB is the government organisation that investigates marine accidents within the United Kingdom and abroad for accidents involving United Kingdom registered vessels and for marine accidents in UK waters. It is the role of the MAIB to investigate and report, not to prosecute. Inspectors are drawn from the nautical, marine engineering, naval architecture and fishing disciplines and are appointed under the Merchant Shipping Act 1995. An administrative staff deals with records, data analysis and publications and provides general support to inspectors at all stages of an investigation.

The powers of MAIB inspectors and the framework for reporting and investigating accidents are set out in the Merchant Shipping Act 1995. The Merchant Shipping (Accident Reporting and Investigation) Regulations 1999 put the framework into effect.

These regulations are the foundation of the MAIB's work. They apply to merchant ships, fishing vessels and (with some exceptions) yachts and small craft. They define accidents, set out the purpose of investigations and lay down the requirements for reporting accidents. The regulations make provision for the ordering, notification and conduct of investigations, but allow inspectors a good deal of discretion. In carrying out their investigation, the MAIB has extremely wide powers and failing to assist can be a criminal offence. Following the investigation, the MAIB reports its findings to the Secretary of State and subsequently will publish a report on the accident. If there are breaches of regulations identified in this report the MCA or other relevant government departments (such as the Health and Safety Executive) may then take over and prosecute.

The MAIB publishes the results of every investigation. The MAIB also produces a Safety Digest, a collection of short reports on the lessons learned from investigations in order to reduce the potential of future such accidents recurring.

In the ordinary course of events the broker will not normally become involved with the MAIB. However, in the event of an accident involving serious injury or loss of life on board a yacht, exactly where an MAIB investigation will lead is rarely a certainty.

The Recreational Craft Directive

For members of the European Economic Area (EEA) on 16 June 1998 the Recreational Craft Directive (RCD) entered into force. Subsequently the Directive was updated by Directive 2003/44/EC. The directive, which is part of European Law, applies to almost all recreational craft between 2.5m and 24m. As a result of the directive it is the responsibility of anyone placing such a craft on sale within the European market to ensure that it meets the requirements of the directive. As with all such directives there are some exclusions such as craft intended solely for racing, canoes, kayaks, gondolas, pedalos, sailing surfboards, historical replicas, experimental craft, craft built for the Owner's own use if not sold within 5 years, submersibles, hovercraft and hydrofoils. The primary aim of the directive was to remove barriers to trade within Europe and not, as some might suggest, to impose a minimum safety standard on recreational craft.

In order to comply with the directive, craft must meet 29 essential safety requirements (ESRs). However, for simple craft many of these requirements are not applicable. Craft can meet a particular ESR by complying with the relevant harmonised standard. However, there are also other routes to achieve compliance.

Within the directive there are four design categories:

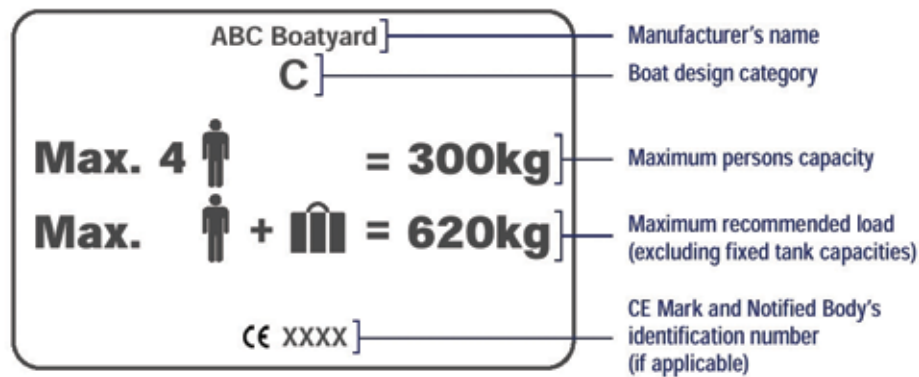
- A Ocean.
- B Offshore.
- C Inshore.
- D Sheltered Waters.

Builders of categories A, B and C have to use "notified bodies" (similar in some respects to certifying authorities) to assess conformity. Builders of category D are allowed to carry out self assessment.

Providing that the craft meets all relevant ESRs it can then carry the CE mark.

In the UK enforcement of the directive is carried out by the Trading Standards Office and failure to comply may result in a fine.

For a broker, understanding the Recreational Craft Directive and how it applies is one of the basics of day to day business.



A builder's plate showing the CE mark

The Classification Society

Another organisation that is mentioned frequently and is often misunderstood is the Classification Society of which Lloyd's Register, Det Norske Veritas and the American Bureau of Shipping are probably the best known. Frequently, Classification Societies are regarded as a standard that has to be achieved (and maintained) and all too often people misunderstand that the standard only applies to certain aspects of a vessel.

Classification Societies all work to sets of published Rules that define the minimum acceptable standards for certain aspects of different types of craft considered relevant by the particular society. Most of the major Classification Societies have specific rules for yachts and small craft but in fact it is not true that all, or indeed any, craft must comply with these rules.

When a yacht is built to Class this means that the design and construction of the yacht has followed the specific rule requirements of the Classification Society. It does not mean, however, that every aspect of the yacht has been considered and evaluated by the Classification Society. The only way to determine what is or is not included is to refer to the Classification Society's Rules as applicable to the particular craft.

Of particular importance to note is that the Classification Society's Rules do not detail the minimum level of fire fighting equipment or lifesaving equipment that a yacht or small craft needs to carry.

The ten most prominent Classification Societies belong to a grouping called the International Association of Classification Societies (IACS). The 10 member organisations are: -

- American Bureau of Shipping (ABS)*
- Bureau Veritas (BV)*
- China Classification Society (CCS)
- Det Norske Veritas and Germanischer Lloyd (DNV GL)
- Korean Register of Shipping (KR)
- Lloyd's Register of Shipping (LR)*
- Nippon Kaiji Kyokai; ClassNK (NKK)
- Registro Italiano Navale (RINA)*
- Russian Maritime Register of Shipping (RS)

* indicates whether that society has specific types of yacht or small craft

One final area of misunderstanding is the role that Classification Societies play in Flag State regulation. Some Flag States delegate some or all of their statutory inspection functions to Classification Societies. In such cases, a classification surveyor can survey the craft and issue a certificate on behalf of the Flag State (provided the craft complies with the Flag State regulations). When working in this role the class surveyor is, in effect, the same as a Flag State surveyor. However, the same surveyor can (and often does) at the same time carry out the classification survey and issue the classification certificates. Therefore, at one time the surveyor can be fulfilling two different roles. One is a statutory role where certification is compulsory, the other is a classification role where certification is not mandatory.

It is this second area where confusion sometimes arises when a vessel is issued with a safety equipment certificate by a class surveyor. In this case the certificate only means that the craft complies with the relevant Flag State regulations. It does not mean that the classification society has approved the safety equipment. As already stated, classification society rules do not normally cover the minimum requirements for fire fighting and lifesaving equipment that needs to be carried.

Yacht Racing Organisations

Many pleasure yachts take part in racing whether this is at local club level or at an international level. Provided such craft are pleasure craft, as has already been emphasised, there is no minimum safety requirement. Therefore, yacht racing organisations set and monitor a minimum level of safety compliance.

Almost all yacht clubs have their own specific 'safety rules'. The extent of these are directly proportional to how litigious the particular country is, with the US and the UK being numbers one and two. The International Sailing Federation lists a very large number of affiliated sailing/racing clubs. Most of the clubs mentioned include their own, club specific, safety rules.



For sailing yachts the International Sailing Federation (ISAF) (originally known as the International Yacht Racing Union) the governing body for the sport of sailing established in Paris in 1907 sets the minimum safety standards see <http://www.sailing.org>

Other organisations, both not-for-profit and commercial, organise specific races and/or events. These include the Royal Ocean Racing Club, Royal Yachting Association, Clipper Round the World and the SAEM Vendée for the Vendée Globe. Each one imposes specific safety requirements for the competitors that roughly equate to the risk envisaged during the race.

Other Organisations and Schemes – RNLI, RYA, BSS

In the United Kingdom two other organisations have a particular interest in yacht safety. These are the Royal National Lifeboat Institution, the Royal Yachting Association. In addition, the Environment Agency and British Waterways introduced the Boat Safety Scheme. They all approach safety from completely different directions.



The Royal National Lifeboat Institution is the organisation that voluntarily goes to the aid of seafarers in distress at sea. Therefore, the organisation is uniquely placed to identify from first-hand experience where yacht safety breaks down. The organisation is maintained by voluntary donation and, therefore, needs to be particularly cautious with how it uses the money it is given. As rescuing people has a high risk to both life and property, the RNLI recognises that a proactive approach to yacht safety can help to reduce the risk to life and hence the number of times their services are called for. As a result, the "Sea Check Safety Scheme" was introduced whereby experienced and trained individuals are made available to yacht Owners to discuss and advise upon the minimum levels of safety equipment that a craft should carry.



The Royal Yachting Association on the other hand is an organisation that represents yacht and small craft Owners. In essence, it believes that education is better than regulation and among other things it provides a framework for the education and training of yacht and small craft Owners. As part of its educational process the RYA publishes the "Boat Safety Book" booklet that recommends a minimum level of safety equipment that a yacht and small craft should carry.



The Boat Safety Scheme was established in 1997 by the Environment Agency and British Waterways to promote safety on the inland waterways. The scheme sought to set minimum standards in respect of boats and their on board installations and components. At the same time it became compulsory to obtain a navigation licence and to demonstrate having third party liability insurance. Boats using the inland waterways are required to have a Boat Safety Scheme Examination and on successful completion are issued with a certificate that is valid for four years.

It is important to emphasise here that none of the above organisations or authorities operates in a vacuum. There is frequent and close co-operation between organisations with the common purpose of ensuring the safety of life of those who go afloat in yachts. Nevertheless, as already emphasised, no clearly defined single minimum standard exists that is compulsory for yachts used solely for leisure purposes.

3. THE PURCHASE OF A YACHT

The primary function of the yacht broker is to bring a willing buyer (purchaser) of a yacht together with a willing seller (vendor) and thereby earn a commission on achieving a successful sale. The following section is a general guide to a typical sale and purchase process. It is not meant to imply that this is the only way a yacht is bought or sold and, indeed, there are many individual variations of the general process described.

Finding the Right Type of Yacht

The range of craft available to a prospective buyer is enormous, as is the experience level of the prospective Owner. Generally speaking, a yacht is a luxury item and frequently both sale and purchase can be very emotive. Some of the factors that should be considered before a purchase include intended use, budget and level of previous experience. After this come more specific questions such as need for a crew, where the craft is to be kept and how much time and money the maintenance of the boat will require.

As a broker taking an instruction for a sale it is important to establish the Owner's requirements. Whilst this is a statement of the obvious, it is not uncommon to start the sale process only to find that when it comes to actually parting with the yacht, the Owner does not really want to sell! Take time to discuss your prospective client's requirements and draw from your own experience and preferences to offer advice and assistance where appropriate.

For a first time seller with absolutely no experience (other than having bought the yacht in the first place) there are several books and guides published on buying a yacht and these are also an excellent source of advice for selling.

Broker's Listing

Methods of selling a yacht divide into two categories, the private sale through classified advertisements and/or the internet or sale through a yacht broker.

Classified advertisements can be found in most of the monthly yachting journals and locally in the windows of chandlers and boat yards (where the boat yard or chandler does not operate a brokerage).

For the Owner wishing to sell the craft, the advantage of a private sale is the fact that there will be no brokerage commission when the sale is concluded. However, the disadvantages are that more time is involved in promoting the craft, organising viewing and discussing details, that there is not such a wide reach for potential customers for the sale and the fact that there is no one who can offer expert advice to help with the sale.

For the buyer it might mean a slightly cheaper purchase but also more problems in concluding the deal and a greater level of uncertainty of the right of the seller to proper legal title for the craft.

For either type of sale, caution is required in how the yacht is described. The Trade Descriptions Act requires an accurate representation of the yacht in any advertising. Therefore, excellent condition means just that and if there is dirt in the bilge the yacht is not in excellent condition!

For the Owner selling through a broker the advantages and disadvantages are reversed in that there is better exposure to potential customers and greater help with the sale but potentially less money because of payment of the brokerage commission (although this latter point maybe largely offset by the skill of the particular broker in achieving the right price).

For the buyer the brokerage sale means that he may pay more than for a private sale and also, more importantly, the Owner (vendor) now has a broker representing him whereas the buyer is on his own (unless he uses a surveyor)



Montage of different magazines that advertise yachts for sale

Listing the Yacht

Before the broker can offer the yacht for sale, it is necessary for the details of the yacht to be collected and the title of the yacht to be established.

Detail listings come from a careful inspection of both the documents of the yacht and the yacht itself. The broker will need to collect the yacht's specification, in terms of dimensions and equipment, as well as determining the appropriate condition in order to describe the yacht correctly. Included within this is also the question of checking compliance with the Recreational Craft Directive and the VAT status of the yacht.

Title comes from verifying that the vendor does, in fact, have the right to offer the yacht for sale. The exact process for this will depend greatly upon whether or not the yacht is registered and/or exactly how good the paper trail is from the original builder to the incumbent Owner. However, for the broker this is a vital activity. If a broker were to facilitate a sale for a vendor that did not have legal right to title, and the rightful Owner was subsequently to reclaim the yacht (as would be his legal right) the buyer could try to sue the broker for negligence.

Inspection

Having found a prospective buyer, the broker needs to spend time to make certain that the yacht is appropriate to the needs of the potential new Owner. It is possible that the buyer may require a survey but before this, in order to save everybody's time and expense it is better to make certain that the prospective Owner carries out his own careful inspection. The broker needs to show the yacht in a balanced light to the prospective Owner. There is no point in trying to hide defects or to make the yacht out to be something it is not. Even an inexperienced new Owner can identify problem areas and this only serves to undermine the sales process by destroying trust.

Generally an inspection should include some form of sea trial (where practical) to confirm that the craft functions as it should and it is important that the broker allows the prospective Owner sufficient time and space for him to evaluate the craft properly.

It is important to keep in mind that working as a broker is about building relationships. If a sale goes well and both the vendor and the purchaser are happy, the chances are that the broker has doubled his client base (as the seller may well be looking for a new yacht and the buyer will need to sell at some point in the future). At the inspection stage the broker has the opportunity to demonstrate his knowledge and his integrity and also to build the sort of lasting relationship that successful and experienced brokers enjoy.

Negotiation and Contract

Negotiation is essentially a matter of offer and counter offer until the time that both parties agree on a figure. At this stage the actual terms of the sale normally begin to be considered (although some of these items will also have been considered during the offer stage) and the form of the sale contract is discussed and agreed. Different standard sale contracts exist or the buyer/seller may wish to use marine solicitors. In either event a contract will be agreed and, it is hoped, signed.

Care is required by the broker during this process to avoid becoming bound into a contract unintentionally. To avoid this, the broker needs a detailed understanding of the law relating to the formation of contracts and this is covered in detail in a later Module.

The contract will normally make provision for the payment of a deposit including the terms for return of the deposit and may specify a time scale for the buyer to commission a survey. Often, but not always, the standard time period for survey is 14 days.

If a survey is required the prospective purchaser may well ask the broker for suggestions/recommendations of a local surveyor to use. Once again, caution is required. If a broker recommends a surveyor there are two pitfalls awaiting the unwary. The first is the possibility for a conflict of interest and the second is another potential liability for negligence.

The conflict of interest arises as both broker and surveyor derive financial benefit from the sale transaction but remuneration depends upon different performance criteria. For the broker, the commission payment comes from the vendor on successful completion of the sale. For the surveyor, payment comes from the purchaser, normally irrespective of the outcome of the intended transaction. Therefore, it is in the broker's interest that the survey comes out well (few defects or problems) whilst it is in the surveyor's interest to make certain that he identifies all the defects and problems (so that he is not sued for negligence subsequently). As brokers have the opportunity to suggest/recommend surveyors to prospective buyers, there is the potential temptation for both the broker and the surveyor to be more accommodating than perhaps they would be if neither of them had a financial interest.

The potential liability for negligence comes if the recommended surveyor does a poor job for his client (the purchaser). In such a case the buyer might well look to the broker for compensation if the surveyor does a shoddy job.

One way round this is for the broker to provide a list of all the surveyors working in the area together with a letter stating this together with an exclusion for liability and a statement that the particular ability and/or skill of the surveyor has not been checked or assessed by the broker. There is, therefore, no liability. Whilst such an approach does not guarantee that a potential buyer will not “have a go” at the broker should he prove dissatisfied with the survey, it goes a long way in helping to reduce the possibility of the buyer succeeding.



Title document, bill of sale and builder's receipt

Survey

For a pre-purchase survey, the survey instruction to the surveyor should come from the buyer directly (not through the broker). When the surveyor receives the instruction specific expectations of what is wanted are discussed between the buyer and the surveyor and terms agreed. Frequently, depending upon the type of survey required, the survey may be carried out with the yacht out of the water. Organising and paying for the boat to be lifted out of the water is normally the job of the buyer. However, both buyer and broker may pass this task to the surveyor (as the lift out is done so the survey can take place and, therefore, is normally organised for the surveyor's convenience). In such a case, all parties need to be very clear on the terms of the surveyor's appointment. Remember, the yacht does not yet belong to the buyer (on whose behalf the surveyor is working) and the Owner will be looking for compensation for any damage done to his yacht (through no fault of his own) before completion of the sale. Equally, the broker might be acting as agent for the vendor and, therefore, will be responsible for discharging his responsibilities properly (in terms of organising the lift out). Unless all parties are very clear on whose responsibility (and hence liability) it is problems can arise.

Subject to what has been agreed with the buyer, the object of a pre-purchase survey is normally to identify all defects with the craft that could normally be discovered. It is not the purpose of this module to go into the detailed requirements of the survey but suffice to say that this means that most of the craft will need to be opened up and inspected and most or all of the systems tested. The surveyor will need to spend sufficient time on board in order to identify and record all the defects properly and will need sufficient skill to interpret what it is he finds in the context of the buyer's requirements.



A surveyor at work

On completion of the survey, the surveyor should prepare his report for the potential buyer, preferably within a limited timeframe.

It is at this point that problems can occur when the surveyor's report identifies defects (whether warranted or otherwise) that cause the potential buyer to withdraw or to seek a significant price reduction. The actual terms of the withdrawal from the sale contract will depend upon the specifics of the contract and this can on occasion be an area for disagreement and conflict.

In an ideal world, the survey report should be a balanced and factual report that identifies the various problems and defects found and puts them into the context of the buyer's specific requirements and the cost significance in the context of the overall value of the vessel. Often, unfortunately, this is not the case.

Completion and Title Transfer

With the survey report in hand, the buyer is now ready to complete the sale (or possibly walk away). Depending upon what has been identified in the report, renegotiations of the contract may take place to make allowances for previously unknown defects. It is here that a good surveyor can assist with the sale process. If the report is factually accurate and represents the yacht in a fair and balanced manner, both vendor and buyer will be satisfied and the chances of concluding a deal increase dramatically.

With all negotiations completed, the sale will proceed and title transfer will be effected by means of a bill of sale (and registration if the craft is already registered). With luck, all parties will be happy and the new Owner will be free to enjoy use of his new purchase.

4. THE LAW AND YACHTS

As with most things in modern day society the law is never far away and whilst limited, the same is true for yachts. In this section we will look very briefly at some aspects of English law in areas where the broker is likely to have some contact. A more detailed coverage of the law as it relates to yachts is included in Module 3 – Registration, Title, Rules and Regulations and Module 4 – Boat Brokers and the Law.

Merchant Shipping Legislation and Yachts

As has been stated previously, most regulations that apply to commercial vessels do not apply to yachts provided they are used only for private pleasure purposes.

Some of the aspects of United Kingdom Merchant Shipping law that a broker may come across from time to time follow.

Registration

A ship or yacht is normally registered in order to demonstrate who the legitimate Owner is and, therefore, who is responsible for the vessel.

The UK Register is divided into 4 parts: -

Part I for merchant ships and pleasure vessels. Registration under this section enables the vessel to be used as security for a marine mortgage i.e. the mortgage details are recorded on the Certificate of Registry and noted in the Register at the Port of Registry so that it can be checked if required.

Part II is for fishing vessels. As for Part I, registration under this section enables the vessel to be used as security for a marine mortgage.

Part III is for small ships (less than 24 metres). This is a simple registration costing £10 and does not require proof of title. Therefore, it has no use as security for a marine mortgage.

Part IV is for bareboat charter ships which can include yachts.

Specific requirements and limitations are imposed on those persons and organisations that can own a British Registered vessel. Full details of registration are contained in Module 3.



CERTIFICATE OF BRITISH REGISTRY

PARTICULARS OF SHIP

NAME OF SHIP	NUMBER, YEAR AND PORT OF REGISTRY	OFFICIAL NUMBER
NAME & ADDRESS OF BUILDERS	TYPE OF SHIP	SIGNAL LETTERS
	MATERIAL USED TO CONSTRUCT HULL	IMO NUMBER (IF ANY)
NUMBER, YEAR AND PORT OF PREVIOUS REGISTRY (IF ANY)	ALUMINIUM ALLOY	
	DATE KEEL LAID	DATE MEASURED

PRINCIPAL DIMENSIONS

LENGTH (m):		THE TONNAGE(S) OF THIS SHIP IN ACCORDANCE WITH HER CAYMAN ISLANDS TONNAGE CERTIFICATE IS:
BREADTH (m):		
MOULDED DEPTH (m):		
MOULDED DRAUGHT (m):		
OVERALL LENGTH (m):		
		TONNAGE(GROSS AND NET):
		For ships under 24 metres length, the tonnage is the gross tonnage and net tonnage.

PARTICULARS OF ACCOMMODATION

NUMBER OF SEAMEN (INCLUDING APPRENTICES) FOR WHOM ACCOMMODATION IS PROVIDED:	
NUMBER OF PASSENGERS FOR WHOM ACCOMMODATION IS PROVIDED:	

ENGINE AND BOILER PARTICULARS

DESCRIPTION OF ENGINES	NAME & ADDRESS OF ENGINE MAKERS	ENGINE DETAILS	
		NO. OF SETS:	
		NO. OF SHAFTS:	
		WHEN MADE:	
NUMBER OF CYLINDERS IN EACH SET	DIAMETER OF CYLINDERS (mm)	LENGTH OF STROKE (mm)	
DESCRIPTION OF BOILERS	NAME & ADDRESS OF BOILER MAKERS	BOILER DETAILS	
		NUMBER:	
		WORKING PRESSURE:	
		WHEN MADE:	

ADDITIONAL PARTICULARS

ESTIMATED BRAKE POWER (kW)	ESTIMATED SPEED OF SHIP (knots)	METHOD OF PROPULSION

NAME AND ADDRESS OF THE OWNER

NUMBER OF SIXTY-FOURTH SHARES

REGISTRAR OF BRITISH SHIPS

NOTICE: A Certificate of Registry is not a document of Title. It does not necessarily contain notice of all changes of ownership, and in no case does it contain an official record of any mortgages affecting the ship. In case of any change of ownership it is important for the protection of the interests of all parties that the change should be registered according to law. Changes of ownership, address or other registered particulars should be notified to the Registrar at the Port of Registry. Should the Vessel be lost, broken up, or cease to be entitled to be registered in the Cayman Islands, notice thereof, together with the Certificate of Registry, if in existence, should within 30 days be given to the Registrar of Shipping at George Town in the Cayman Islands under a penalty for default.

NOTE: For the purpose of this Certificate, when a Pleasure Yacht is engaged in trade (by carrying passengers for hire, reference SOLAS Chapter I, Part A, Regulation 11a(xv)) it may also be referred to as a Commercial Vessel.

Example of a UK Certificate of Registry

International Tonnage

From the earliest times ships were taxed by their cargo capacity. This was often measured by the number of barrels that they could carry. In the fourteenth century in England one standard barrel used to import wine was called a 'tun', 'containing not less than 252 gallons', therefore, the number of tuns that a ship could carry was called her tunnage. Today it continues to be a measure used entirely for regulatory and taxation purposes and it has no direct relevance to the size or displacement of the vessel. Rather it is an approximate measurement of the internal volume against a defined set of rules.

In both the commercial and yachting spheres a number of different formulae have been used over the years. Under the current Tonnage Regulations yachts of under 24 metres use a simplified version of the 'international formula' to determine tonnage, with no distinction being made between 'gross' and 'net' or 'registered' tonnage. A tonnage certificate can then be issued by a certifying authority and it is only compulsory for tonnage to be measured if the vessel is to be Part I registered.

Load Line

In the seventeenth century some British ship Owners started to make money by over insuring their vessels and then sending them to sea so deeply laden that they never survived the voyage. As a result of this practice a member of the parliament (Samuel Plimsoll) fought for many years to introduce regulations which limited the amount of cargo a ship could carry. As a result of his efforts, the Load Line Regulations were introduced and ships were marked with a Plimsoll mark on the ship's side so it could be determined if the ship was overloaded.



The load line on the side of a vessel

Today the Merchant Shipping (Load Line) Regulations 1998 (Statutory Instrument 2241) is the piece of legislation which defines the minimum safety criteria for a ship in terms of the degree of buoyancy the ship has together with the margins of stability. The regulations cover certification and survey requirements, load line marking and freeboard, conditions of assignment for freeboard (i.e. the specific requirements and/or stipulations that have to be met for the vessel to comply with the assignment of freeboard), determination of freeboard, stability and penalties for non-compliance.

The Regulations apply to United Kingdom ships wherever they may be and to other ships while they are within United Kingdom waters, except -

- (a) Ships of war.
- (b) Ships solely engaged in fishing.
- (c) Pleasure vessels.
- (d) Ships which do not go to sea.

The definition of a pleasure vessel under the load line rules is: -

- (a) any ship which at the time it is being used is -
 - (i) (a) in the case of a ship wholly owned by an individual or individuals, used only for the sport or pleasure of the Owner or the immediate family or friends of the Owner
 - (b) in the case of a ship owned by a body corporate, used only for sport or pleasure and on which the persons are employees or officers of the body corporate, or their immediate family or friends
- (ii) (a) on a voyage or excursion for which the Owner does not receive money for or in connection with operating the ship or carrying any person, other than as a contribution to the direct expenses of the operation of the ship incurred during the voyage or excursion
- (b) any ship wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club
- (c) in the case of any ship referred to in paragraph (a) or (b) above no other payments are made by or on behalf of users of the ship, other than by the Owner.

In this definition "immediate family" in relation to an individual means the husband or the wife of the individual, and a relative of the individual or the individual's husband or wife, and "relative" means brother, sister, ancestor or lineal descendant.

As with any such rules there are exceptions and limitations.

For the yacht broker it is probably appropriate to have an awareness of what the regulations say as they contain much that is obviously common sense in terms of vessel safety. Whilst the regulations may not be compulsory for pleasure craft they provide a useful standard for which such craft should be aiming.

Collision Avoidance and Rules of the Road

One aspect of International Law that does apply to yachts is the International Regulations for Preventing Collisions at Sea (Colregs) 1972. Whilst most of these regulations relate to the conduct of vessels when in the vicinity of each other they also contain specific appendices which detail the technical requirements for lights, shapes and sound signalling equipment. The regulations apply to "all vessels on the high seas and to all waters connected therewith navigable by seagoing vessels".

Generally, most yachts have very few problems with their lights but some do have problems with shapes and sound signals. The yacht broker needs to have a thorough understanding of the relevant appendices (which detail the technical specifications) so that he can advise his client properly and give the potential buyer incorrect information).

Marine Insurance

Marine insurance is included in this section on law because it is a very special aspect of the industry with particular legal significance. Marine insurance is governed by the Marine Insurance Act of 1906. The insurance is a contract between the Owner of the yacht and the insurance Underwriter who agrees to pay for a loss to the yacht subject to various conditions and exclusions. One very particular aspect of a contract of insurance is the principle of "utmost good faith". In simple terms this means that the contract is only valid if the insured has been honest in telling the Underwriter about the risk.

A more detailed background to Marine Insurance for yachts is contained in Module.

The Yacht Broker and Civil Law

The broker will normally come into contact with two aspects of the law. The first is contract law where the broker agrees to sell a yacht on behalf of a client in exchange for a fee. The second is where a broker is accused of being negligent in the execution of his work and is sued in "tort".

Contract

Most people are familiar with the idea of a contract whether it is to buy a boat, a car or a packet of sweets. In all cases a number of distinct factors are present and these factors decide whether or not any particular contract is valid. A contract does not need to be in writing and it is possible to become bound by a contract without realising it.

For a broker, the contract with the client (vendor) is what sets out the rules by which the broker will work and be paid.

Most brokers use a standard set of terms and conditions that are widely accepted throughout the industry and make every effort to obtain agreement to those terms, in writing, before accepting a listing.

As stated in a later Module – Boat Brokers and the Law will expand greatly on the various aspect of the law of contract.

Tort

As with contract, the law of tort, when being sued for negligence, has a particular number of aspects, or tests, which determine whether an individual is liable (about which more is also contained in a later Module).

As a professional offering a service, the broker is expected to operate at a level of skill and with the degree of care to which other brokers would normally operate. Therefore, if you do a job to the best of your ability and still fail to do something that other averagely skilled brokers would normally do, subject to other requirements, you could well be held liable for negligence. As no broker can be expected to know everything and because clients and their yachts vary so much there is always a real potential for mistakes, particularly when busy or under pressure.

One final word of warning on the subject of negligence, even with good trading terms and conditions of contract you cannot contract out of your liability in negligence. Therefore, if you get it wrong expect somebody to come after you.

5. HEALTH AND SAFETY FOR THE YACHT BROKER

The role of common sense for the yacht broker

Health and safety is everybody's concern but it can all too frequently be ignored or simply dismissed. Each individual has a duty not to do something that deliberately puts himself (or others) in a dangerous situation. This applies equally to the yacht broker as to the vendor or to the buyer.

It is not unusual for a broker to work on his own, in a relatively remote location, particularly when inspecting a yacht in order to note its details. Whilst the broker is engaged actively to pursue a particular goal (that of looking at the yacht and preparing an inventory), it is important that appropriate consideration is given to his own personal protection, to the protection of others and to preservation of the environment. Much of this comes under the general title of the application of common sense. Situations differ but on every occasion when a broker sets out to undertake a job he should take time to consider a range of different factors.

Preparation

Appropriate preparation before inspecting a yacht is essential.

The weather may not initially seem to be terribly relevant until the first time you carry out an inspection on a cloudless day in summer without adequate skin protection or during a freezing day in winter without adequate protection against the cold. Once you become absorbed in looking at the yacht, it is sometimes possible to lose track of time. Both sunburn and hypothermia are progressive and only become apparent once it is too late and the damage has been done. Weather forecasts are easily available so it always pays to check the forecast and make certain that you are properly prepared to cope with the anticipated weather. Included in this section is the wind. Is it really sensible to carry out an inspection on a yacht that is standing ashore when the wind is blowing gale force 8 across a bleak and open shoreline? How much value will you gain from trying to carry out an inspection of the outside of the craft during a rain or snow storm?

Location of the yacht plays a major part in the safety of the broker. Many yachts are located in modern marinas with excellent facilities and good, safe access. However, initial inspections may be carried out in quite different locations. A broker maybe asked to list a vessel that is kept in a modern boat yard where the yacht has been lifted ashore and chocked in a purpose built cradle. Alternatively he could be asked to list a vessel that is kept on a semi-tidal, semi-soft mud mooring on salt marshes miles from anywhere. At this point it is not the intention to explore whether carrying out an inspection for listing the vessel in such conditions would actually be doing justice for the client (particularly in terms of the pictures!) but it is meant to show the possible alternatives that may need to be considered.



A yacht on dodgy supports

Carrying out an inspection of a yacht on a tidal mud flat might be the only realistic method of finding out the information that is required for a listing. However, in such a circumstance the broker needs to be particularly aware of the specific risks of working in such a location. Equally, working around a 100 tonne yacht suspended from a crane or straddle carrier when the lifting strops are damaged or worn brings with it other types of risk. As a broker, do not be tempted into the false belief that the boat yard or crane driver will always check that his equipment is satisfactory just because the boat yard has a good reputation. Always check for yourself that, wherever the yacht is, the surrounding environment is safe and appropriate in which to work.

Sufficient lighting is vital to see properly what it is the broker is looking at but it is also vital for your safety. Large and old yachts with no electrical power working present particular hazards to the broker as does working in a barn with no electricity and little natural light. Make certain that there is adequate lighting whether this takes the form of two or more torches or the rigging of temporary site lights run from a portable generator.

Ventilation is vitally important, especially if the broker is tempted to operate any of the equipment on board the yacht. Lack of oxygen and a build up of carbon monoxide kills several people every year on board yachts, sometimes from leaking exhausts and sometimes from faulty appliances and heaters. Also a build up of propane or butane gas in the bilges can lead to a serious explosion with the introduction of a source of ignition. Therefore, always make certain that any boat that is being operated in any way is properly and fully ventilated before committing yourself to the internal depths.

Before boarding a craft make certain that it is safe to do so, particularly when the yacht is supported ashore. Sometimes the securing of a yacht can be minimal and the potential for it to topple once the broker steps on board can be great. If in any doubt, do not board but seek assistance from the yard to make certain the yacht is safe.

Location and Communications

If working in remote and lonely locations make certain that someone is aware of exactly where you are and have a positive reporting system for your safe return. From time to time individuals have accidents such as broken arms and legs from slips and falls. If this was in a remote location the chance of help becomes that much less and hence the risk to the broker (if it happens to be him) increases.

Access and Use of Ladders

When a boat is ashore all but the smallest will normally require some means of portable access to gain entry to the inside of the craft. Normally such access is by means of a ladder. Make certain that ladders are fit for use, properly positioned and secured at the top. If at all possible avoid clambering on adjacent structures or up the swimming platform ladder as both have the potential to lead to accidents.

If using temporary staging make certain that it is properly rigged and secured.

Always keep in mind that in the event of an accident your insurance company may not pay out if you did not take all reasonable precautions.



Two examples of temporary staging

Sea Trial

Another area that can sometimes be overlooked from a general safety perspective is the sea trial. Depending upon the vendor's particular requirements it is not uncommon for the broker to organise the sea trial either directly (with the broker acting as the skipper) or with the broker engaging a professional crew. In both cases the broker needs to keep in mind essential health and safety.

At its most basic the question "is the yacht in a safe condition to go to sea?" must be asked. Whilst an Owner can go afloat in a totally unsafe condition, a broker, in his professional capacity cannot. In the event of an incident during a sea trial that was reasonably foreseeable, the broker could find himself being held liable in negligence for taking (allowing) the yacht to go to sea.

Before allowing a sea trial the broker must, at the very least, believe the yacht to be in a safe condition, make certain it is provided with adequate safety equipment, make certain it is properly manned by competent crew and ensure that the trial only proceeds when the weather forecast is suitable. All crew should be briefed on basic safety procedures, including the potential buyer and his attending surveyor.

As stated at the start of this section, Health and Safety is in essence the application of common sense. However, an enthusiasm to do the job or a desire to meet a deadline can introduce pressures (as can many other factors) that lead the broker to overlook or ignore actions or precautions that he knows are sensible. It is on occasions like this that accidents occur. Take time to evaluate exactly what it is you are trying to achieve and remember to include consideration of your own and other people's safety.

6. CUSTOMER RELATIONS AND COMMON COURTESY

A successful broker relies extensively on his ability to maintain good relationships with people, even in difficult circumstances. It is important to remember that both attitude and appearance establish what are known as “first impressions” long before an individual has a chance to demonstrate, through words and actions, that he is a trustworthy, knowledgeable and capable individual.

A broker needs to be diplomatic and yet assertive, communicative yet discreet, engaging yet respectful. As a broker, you never know when or where you are likely to run into a customer (new or old). From the outset start off by treating everybody with the same level of common courtesy, that way you are unlikely to be caught out. Remember that whilst judgements about a person made on the basis of stereotypes can in many cases paint an accurate picture they are by no means definitive and one careless word to the wrong person at the wrong time could cost you a very worthwhile client.

7. BROKERAGE COMPANIES AND ORGANISATIONS

There are three possible types of yacht brokerage company: the sole trader, the partnership and the limited company. The following is a description of the three types together with a brief description of the main advantages and disadvantages.

Sole Trader

A sole trader (or sole proprietor) is a business in which one person is the Owner. The business can, however, employ other people. Operating this way removes most of the formalities of establishing a business. There is no requirement to register as a sole trader for example or to present audited accounts.

A sole trader is an unincorporated business; liability, therefore, lies with the proprietor. A sole trader has “unlimited liability”. This means that the personal savings and assets of the proprietor could be at risk if the business fails and the trader could be made bankrupt. Equally, however, the sole trader takes all the profits.

In the UK a sole trader is responsible to account for his earnings to both the Inland Revenue and Contributions Agency.

The greatest single advantage to being a sole trader is the lack of requirements in respect of legal documentation and procedures. Having made the decision to start in business, the moment you gain your first paying customer you are, in fact, in business. The greatest single disadvantage is that you are entirely “on your own”. If anything goes wrong, everything you have (in terms of personal property) is at stake.

Partnerships

A partnership is a relationship between two or more people carrying on business together with a view to making a profit. Partnerships are neither incorporated nor registered. Unlike a company, therefore, a partnership has no separate legal identity. For the purposes of legal transaction or litigation, only the members of the partnership can employ people, own property, enter into contracts or be sued. As with sole traders each partner is regarded as liable on a personal basis. However, what is different for a partnership is that each partner is liable for all the debts of the partnership and assets can be seized to pay off debts incurred by the partnership irrespective of which partner incurred the debt. In other words a partnership has unlimited liability and partners are regarded as both jointly and severally liable for the debts of the partnership.

Management of the partnership is normally shared among the partners. It is common practice to have a Deed of Partnership prepared which specifies the agreements between partners. If no such deed is prepared, in the event of a dispute the Partnership Act of 1890 governs the arrangement between the partners.

Profits (income less expenditure) are normally divided equally between the partners, unless the partnership deed specifies otherwise.

Each partner is individually responsible to account to the Inland Revenue and Contributions Agency for their earnings.

Probably the greatest single advantage of a partnership is the combination of lack of formal regulation coupled with the fact that you are not alone in making decisions and “running” the business. Having several people with particular strengths working well together can produce a very potent combination. However, as for the sole trader, if things go wrong, everything, in terms of wealth, is at stake.

Limited Liability Companies

A company is a legal body in its own right, incorporated under the Companies Act 1985 (as amended in 1989). Most yacht brokerage companies are normally private. That means they include the word “limited” in their name. (Public limited companies use the term PLC). A private company must have at least one shareholder, at least one director and a company secretary (who cannot also be the sole director). The main advantage of trading as a company is limited liability i.e. the liability to pay debts incurred by the company are limited to the assets of the company and the share capital (personal assets are not, therefore, normally at risk).

Trading as a limited company does, however, bring with it a number of duties and requirements that can add to the administrative and financial burden. In order to form a company the following documents must be forwarded to the Register of Companies together with a registration fee:

- (i) Memorandum of Association.
- (ii) Articles of Association.
- (iii) Declaration of compliance with the requirements of the Companies Act.
- (iv) Statement of the first directors, secretary and registered office.

Companies are also required to produce audited accounts and to file an annual report with the Register of Companies.

Employees and directors pay income tax and National Insurance under the "Pay As You Earn" scheme and the company pays corporation tax on any profits.

The main advantage of a limited company is the mechanism of limited liability. In exchange for allowing a degree of scrutiny of "how the business is run", liability can be limited to the value of the company's stock. The main disadvantage is the requirement to satisfy a range of specific legal requirements in order to gain the privilege of limited liability.

From a purely financial point of view it may generally be advantageous for new businesses to start as sole traders or as partnerships and, if required, become incorporated at a later date.

When first starting in business, before deciding on what sort of structure will be used, it is important to take appropriate advice from both financial and legal experts. Frequently significant help is available from a number of different sources to assist the start up business to make the first move.

Management of a Brokerage Company

Organisational structure

Organisation of a brokerage company will depend entirely upon the size and complexity of the company. Some brokerage companies consist of one person (with or without administrative assistance) with no management structure at all; whilst others employ dozens of people and, therefore, require more formal management structures.

In a one-man band, the boss has to undertake all the various roles required to make an organisation successful. In a larger company, these roles are divided and particular individuals can be selected for their strength in a given area. The one-man band will probably be extremely flexible with no particular rules, regulations or paperwork whereas the larger company will need procedures and controls that will tend to make it somewhat less able to respond to every individual's differences.

No one type of organisation is necessarily better than any other, it is what suits the particular individual best.

Office

For a broker, location is vital in terms of gaining work. On the south coast of the UK there are many yachts and hence the potential for a lot of work. However, there are also numerous other brokers and, therefore, competition can be fierce. In other parts of the country the exact opposite is the case.

Generally, the brokerage office needs to be in a location close to the yachts that are being sold (although this is by no means always the case particularly with brokerage companies operating over the internet). Such a location provides visibility for the broker in terms of attracting potential vendors as well as providing a shop window for passing trade from which to display those yachts that are for sale.

Facilities

The main requirements for a brokerage office are good communication facilities and good data processing capability. Generally, people do not like talking to machines and, therefore, having someone to answer the telephone can be important. However, with modern mobile communications and divert capabilities this is no longer the limitation it used to be (subject to adequate mobile coverage in your area).

Yacht brokerage details are of vital importance as these are often the first things a potential buyer will come across. Personal computers together with word processing software, digital cameras and high quality printers make this relatively easy.

Remember that in the first instance all that your client sees of you is your brokerage details sheet (and possibly your covering letter). There is no excuse these days for spelling mistakes or poor grammar. Ensure that the details you send out are ones that you would be happy to receive (in terms of both layout and content) if you were looking to purchase a yacht.

Personnel

Among the yachting public at large there is a general perception that anyone can be a yacht broker and of course they are right. Anyone can. However, to be a good yacht broker is entirely another matter.

A good broker needs to be an excellent communicator, he needs to be knowledgeable about people, knowledgeable about the boats he is selling and an excellent organiser.

Working as a yacht broker requires a certain kind of enthusiasm to last the course. Many people start as yacht brokers but only the determined continue.

Selection of personnel to work as brokers is extremely difficult and retention is even harder. Many people are happy to train as a broker (at your expense) but as soon as they feel ready and able they will leave, moving to a competitor or setting up on their own in search of greater rewards or responsibilities.

Money Management

In common with any business, money management is the difference between success and failure. Good money management is simple in theory but difficult in practice. As long as income exceeds expenditure the venture will make a profit. However, once payment of bills, collection of debts, accounting, the tax and VAT man become involved this simple ideal goes out the window.

Accounting

The key to a successful yacht brokerage business is good accounting (as it is with any business). On a regular basis you should know how much has come in, how much has gone out, when it happened and where it went.

Modern computer accounting packages are readily available, some of which are more suited to small businesses than others. Book keeping and accounting services are also readily available. Therefore, the aspiring broker starting in business is well advised to make use of all such available tools, saving his energy for the aspects that first attracted him to the work, that of selling yachts.

Cash flow

Cash flow, or the trick of keeping money in the bank and available, is probably the most critical activity for any small business. A company can be trading successfully and making a profit but negative cash flow can bring it down.

The key to successful cash management is to constantly be looking ahead to know what is going to be due when and to pursue debtors ruthlessly to keep them to their payment dates.

Remember there is no reason on this earth why a payment should be late other than the fact that the person responsible does not want to/or cannot pay it!

Tax and VAT

Many people when first starting in business worry about income tax and VAT. If the company does no work then there is no turnover and hence no profit. In such a case the Inland Revenue and VAT office will not be interested. Once you start to generate business and make a profit you are in a position to buy expert help (which need not be that expensive) and, therefore, there is no need to be unduly concerned. It has been said that the objective of a small business should be to pay as much tax as legally required because that way you know you are making a lot of money!

In the first instance most business do not need accountants and lawyers. A good and experienced bookkeeper will charge significantly less than a Chartered Accountant and is probably all that you will need to start. However, as business develops and the business becomes more complex use of an accountant may become essential.

Sales and Marketing

Whilst many people when starting a small business worry about tax and VAT, few seem to worry about sales and marketing and yet these two activities are probably the most crucial. Without sales there are no clients. Without clients there is no money and hence no business.

Sales is a world of its own. You can place an advertisement in the monthly yachting journals and trust to luck or you can learn about sales, sales techniques and prospects and go out to generate business for yourself. Sales is a human activity. Some people are naturally good at it, others are not. Many people do not like it (because it involves rejection) but in all cases the basics can be learnt. A good broker is always a good salesman. However, a good broker will also understand that there is more to running a successful brokerage business than selling a yacht at any cost.

Marketing, as opposed to sales, is about looking ahead and determining before it happens what the market and your clients are going to want and then develop a product to suit. Many traditional brokers will state the only way to sell a yacht is in a particular way. Whilst this is probably true for them (as their method will have withstood the test of time) they may not have stopped to ask their clients if what they received was actually what they wanted. There is no right or wrong way to "sell" a yacht but there is customer satisfaction. The one way to ensure success as a yacht broker is to seek customer satisfaction constantly and let your customers be your sales force.

Trade and Professional Bodies



The profession of yacht broking has been in existence for a long time. As with many professional groupings, as the number of individuals involved in the business increased, some of the people came together to form an association. In the UK the first such association was the Association of Brokers and Yacht Agents (ABYA). To quote from the ABYA web site (www.abya.co.uk):

"Members of the Association of Yacht Brokers and Yacht Agents are professionals in boat buying and boat sales. ABYA is a professional organisation with over 150 members in the UK and abroad".

More recently the British Marine Federation (BMF) has established a working group, The Boat Retailers and Brokers Association (BRBA), to represent the interests of UK Yacht Brokers in the wider European and International arenas. Again to quote from their web site (www.britishmarine.co.uk/brba): -



"The BRBA represents all companies and individuals involved in the sale of new and second-hand craft. It encourages the training and development of individuals working in this field and aims to identify, debate and resolve the specific issues affecting the boat retail and brokerage sector".

One of the objectives of the BRBA is to promote best practice amongst its members and to do this members agree to abide by a Code of Practice. A copy of the BRBA Code of Practice is included in Appendix 1.

The BRBA in association with both the RYA and ABYA also publish a Boat Buyers Guide and a copy of this is included in Appendix 2.

Similar organisation exist in other countries such as :-

France

MYBA – The World Wide Yachting Association (www.myba-association.com)

The acronym comes from their previous name – the Mediterranean Yacht Brokers Association.

Greece

HYBA - Hellenic Yacht Brokers Association (www.gya.gr)

Italy

ISYBA – Italian Ship & Yacht Brokers Association (www.isyba.it)

United States of America and Canada

FYBA – Florida Yacht Brokers Association (www.fyba.org)

CYBA – Charter Yacht Brokers Association (www.cyba.net)

YBAA – Yacht Brokers Association of America (www.ybaa.com)

CYBA - California Yacht Brokers Association (www.cyba.info)

GCYBA - Gulf Coast Yacht Brokers Association (www.gcyba.com)

NYBA – Northwest Yacht Brokers Association (www.nwyachtbrokers.com)

OYBA - Ontario Yacht Brokers Association (www.boatingontariodealer.com)

BCYBA - British Colombia Yacht Brokers Association (www.bcyba.com)

Other countries have trade associations that promote their leisure maritime sectors but without going as far as have a separate yacht brokers organisation, such as: -

New Zealand Marine Industry (www.nzmarine.com)

8. THE ESSENTIAL RESOURCES FOR A YACHT BROKER

Technical Resources

Reference books

A valuable resource for the yacht broker will be a reference library. Such a library can take many forms such as a collection of books and magazines or use of the World Wide Web.

The role of the reference library is to provide the broker with a source for information to which he can refer. Many brokers maintain technical files in which they keep relevant articles from magazines and publications catalogued in relevant sections. Through time such files build to become invaluable resources.

One final word of warning. Just because it is old does not mean it is not relevant. Today there are yachts afloat that are over 100 years old. If you were to have an original article on a particular yacht when first launched, think how attractive this could be to a potential buyer who is interested in the history of the yacht!



An extensive yachting magazine collection

Record keeping and the database

Today with the personal computer an accepted part of most business, database management is a lot easier. Basic records of such things as customer contact details, craft details and yachts names steadily build to provide a very valuable tool. However, in the UK, remember that if you intend to keep customer personal information on computer it will be necessary to register under the Data Protection Act 1998.

Remember that:

- Data may only be used for the specific purposes for which it was collected
- Data about an individual must not be disclosed to other parties without the consent of that individual

Network of contacts

With such a diverse industry it is unrealistic and indeed dangerous to expect or believe that you will ever know all there is to know about yachts. Therefore, in doing your job it helps to have a range of specialist contacts on which you can call when in need. Such a network can include the obvious people such as a rigger, sail maker, mechanic or electrician or it can be the more obscure such as a seamstress or banker. Actively work to develop your network of contacts and if ever in doubt do not be afraid to ask, most people like to help.

Networks are also useful from the business perspective. As a general guide to the mathematics behind networks, most people know approximately 200 other people. Therefore, if you told all the people you know that you are starting as a yacht broker and you persuaded each of them to tell their friends you are one step away from reaching a target audience of 40,000 people.

There are numerous opportunities to develop your network whether through informal social gatherings at the local yacht club to formal conferences hosted by professional organisations. Always make certain that you have a good supply of business cards and make the effort to follow up with everyone you meet.

Professional Indemnity Insurance

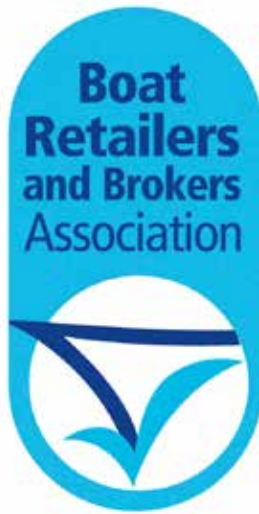
The final part of the puzzle is that of professional indemnity insurance. This is insurance that provides protection to you against the day that you make a mistake. Pragmatically everybody must make mistakes because nobody is perfect. The key, therefore, is not if they make mistakes but how significant these mistakes are.

Professional indemnity insurance tends to be expensive and, therefore, for the yacht broker starting out on his own it can be prohibitive. However, it has become generally accepted practice in the UK for brokers to have such insurance (known as Errors and Omissions (E&O) Insurance) and you might find it difficult to trade if such insurance is not in place.

The companies that provide such insurance can be very helpful to the budding broker. As it is their role to pay for the mistakes of others the E&O insurance companies have good experience of what not to do. Some companies provide this information freely to their insured (by means of newsletters) as it is in their interests to educate their clients and hence to reduce the potential number of claims.

The best approach is to always set out to do the best possible job that you can and over time build a portfolio of experience that you can point to in order to demonstrate to the Underwriter that you are a good risk, thereby keeping your premiums as low as possible.

APPENDIX 1 – BRBA CODE OF PRACTICE



Boat Retailers and Brokers Code of Practice

Boat retailers and brokers must adhere to the following terms:

1. Standard of Service

- a. Members are required to maintain the best practicable standard of service to Customers having regard to the nature and price of the goods and services supplied.
- b. Members shall comply fully with all statutory and regulatory requirements applicable to their business, products and services, including in particular all safety regulations.
- c. Members shall act fairly and honestly in all their business dealings and will maintain a professional attitude at all times.
- d. Members shall not conduct their business in a manner which tends to bring the Federation or its membership into disrepute.
- e. Members shall provide Customers with accurate and reliable information including as to price, specification and time of delivery of their products and shall neither misrepresent nor misdescribe their products or services. So far as possible Members shall establish the individual requirements of each Customer before making recommendations to them.
- f. Members will at all times act in an environmentally responsible manner, observing law, the recommendations of the BMF Environmental Code of Practice and any other special or group code of conduct or practice that may apply to the Member.

2. Advertising

- a. No Member shall commission or use advertising which tends to mislead Customers or the public at large.
- b. Members shall observe the requirements of all laws, regulations and Codes of Practice applicable in the place of advertising and the relevant area of circulation or broadcast.

c. Any finding by a competent Court or enforcement authority or regulatory body against a Member in respect of the advertising requirements set out in the Code shall be deemed to be evidence of a breach of the Code.

d. Members are encouraged to incorporate the Federation's Boat Retailers and Brokers logo in their corporate literature and visual advertising material provided always that they comply with the terms of Rule 3 of the Federation's Rules regarding use of the logo.

3. Privacy and Data Protection

Members shall comply with the Data Protection Act 1998 and any other related and applicable legislation in force in their geographical area of operation.

4. Contracts with customers

a. Contract Forms

1. Members shall maintain proper written records of the basis of agreement between them and their Customers in respect of all transactions entered into.

2. Members are strongly encouraged to transact their business upon the Federation's standard form contracts and terms of business wherever practicable and should only depart from such terms in the case of contracts with consumer Customers where they are accepting an equivalent or higher standard of contractual responsibility toward the Customer than provided by the standard form, or by the standard forms of other trade bodies relevant to the particular trade.

3. Members shall not trade upon edited or amended copies of the Federation's standard form contracts or Terms of Business without making the extent of such editing or amendment clear to the Customer before entering into any contractual arrangements.

b. Warranties

Where a Member supplies a warranty or guarantee free of charge to consumer Customers it shall comply with the requirements of the Sale and Supply of Goods to Consumers Regulations 2002 or equivalent legislation under the law of the contract.

5. Handling Customer Monies (Brokerage)

Boat brokers must protect customer monies by using:

1. A solicitor's trust account (escrow account) whereby

1.1 A solicitor holds the money until the transaction is completed. This will require an agreement between the parties and the account will require all party signatures for funds to be released.

1.2 Confirmation of use of this method will be required by BMF from the member's solicitor that such an arrangement is in existence initially and then at any such intervals as the BMF may decide. Members are also required to sign a declaration that such an account is being used to hold brokerage monies. Members will then be required to declare that such arrangements continue to be in place and that such an account is used to keep brokerage monies on an annual basis via the BMF turnover declaration form.

OR;

2. A separate client bank account whereby:

2.1 The member will set up a bank account exclusively for holding customer monies, preferably with a separate bank to that which holds the business's other accounts.

2.2 Confirmation will be required from the member's bank that such an account is in existence initially and then at any such intervals as the BMF may decide. Members are also required to sign a declaration that such an account is being used to hold brokerage monies. Members will then be required to declare that such arrangements continue to be in place and that such an account is used to keep brokerage monies on an annual basis via the BMF turnover declaration form.

Suggested wording acceptable to the BMF for confirmation from the bank is shown in appendix A or available directly from the BMF.

Guidance:

Client or customer monies for the purpose of this code is defined as any and all deposits and sale proceeds. All such monies must be held in one of the two above described accounts or pass through these accounts before being passed on to the vendor or back to the purchaser in order to ensure that all such monies are clearly identified as monies belonging to clients. At no time, should any such monies be held or passed through any other business account save for debit and credit card transactions which may be paid into a company's general account and must be transferred immediately from that account to the client account in order to remain distinct as client monies. Where the majority of card transactions are for brokerage, credit and debit transactions should be set up to go directly into the client account and any non brokerage monies transferred out of the client account to the other account immediately.

You must not hold any money other than client money in the designated client account. Legitimate deductions, for example, VAT, commission, and interest may be withdrawn from the client account and transferred to another business account when these deductions are due.

6. Liability Law

A Member shall not attempt to oust the application of relevant consumer protection legislation by nominating a governing law for the contract other than the law of the country with which the transaction has the closest connection, or the law of the states in which the Member and the Customer are domiciled.

7. Dispute Resolution

Where appropriate Members shall encourage their Customers to refer disputes which arise between them, and which cannot be amicably settled, for resolution under the Federation's Alternative Dispute Resolution scheme.

8. Transactions and Correspondence

In the event of a dispute between a Member and a Customer, all correspondence shall, wherever possible, be dealt with within the following time limits:

- a. An acknowledgement shall be sent not later than 21 days from the date of receipt of correspondence.
- b. A detailed reply, or a reply containing a detailed explanation for any delay, shall be sent not later than 28 days from the date of receipt of correspondence.
- c. If a matter that comes within the scope of this Clause is dealt with other than in writing, the Member shall nevertheless produce evidence in writing or other appropriate form that the matter has been dealt with in accordance with the time limits stated above.

9. Complaints

- a. In the event of a complaint by a Customer, Members shall make every reasonable effort to reach a swift and fair solution.
- b. Where a transaction has taken place “on-line” Members shall accept “on-line” complaints from Customers and deal with them within an appropriate period of time, which time period shall be no longer than that set out above.
- c. Retailers shall make every reasonable effort to deal with complaints of a minor and general character with a view to avoiding recourse to suppliers. When complaints are of such a nature that reference to the supplier is necessary, a Retailer shall use his best endeavours acting as an intermediary to bring about a satisfactory conclusion.
- d. Any unresolved complaint arising out of an alleged breach of contract or negligence by a Member may be referred to Alternative Dispute resolution. It shall be subject to such time, financial and other restrictions as from time to time shall be agreed.

GENERAL CONDUCT

10. Misleading Use of the BMF Logo, etc.

- a. A Member shall not, directly or indirectly, cause, permit, assist, encourage or in any other way provide any person, company or firm not in membership of the Federation with the opportunity to represent itself as a Member or as being associated with or connected to the Member or the Federation in any way that is likely to mislead any person by the use of the Federation logo.
- b. Where a Member is alleged to be in breach of this provision the Member shall comply with any requirement placed upon it by the Federation within any time limit that may be specified.

11. Payment of Debts

Members shall settle all debts properly due without any undue delay or within any period agreed with the creditor.

12. Insurance

- a. Members shall carry appropriate levels of insurance cover with insurers authorised to conduct insurance business in the Members' geographical area of operation so as to comply with 1. Their statutory obligations to insure in respect of Employer's Liability and motor risks, and 2. Any professional body requirements they may be under in respect of professional indemnity insurance – see 14a.
- b. Prudent risk assessment principles in respect of public liability, occupiers' liabilities, product liabilities and bailee's liabilities.

13. Intellectual Property Rights

- a. Members shall respect the intellectual property rights of third parties' and shall not market, sell or facilitate the sale of counterfeit goods or pirated material; nor shall they abuse or infringe trademark, patent or design right registrations in any jurisdiction.
- b. They shall supply Customers with good title to all intellectual property rights

reasonably necessary to use the goods or services they supply in the manner intended and advertised without infringing the rights or interests of any third party in those goods or services.

14 On-line

In addition to the other provisions of this Code any Member transacting business or transferring data on-line (including the use of E.mail) shall use commercially reasonable security procedures to protect Customer information and payment details and to guard against the distribution of electronic viruses.

15. All Boat Retailer and Brokers shall have and/or will offer to clients:-

- a. Appropriate Professional indemnity insurance to cover errors and omissions occurring in the course of their broking activities.
- b. Use their best endeavours to verify the complete history of ownership of Any 2 hand craft offered for sale.
- c. Use their best endeavours to verify (if possible) the VAT status of 2 Hand Craft, advising prospective clients of any VAT liabilities that may exist in the absence of proof positive of VAT paid status.
- d. All craft offered for sale to conform with relevant legislation (RCD etc).
- e. For 2 Hand craft the ability to offer clients a choice of at least 3 suitably accredited surveyors from IIMS, RINA or YBDSA.
- f. Staff training – minimum standards and staff development and on-going training.

APPENDIX A

The BMF will require confirmation from the broker's bank that a separate client account is in existence from time to time as the BMF may decide.

Below is suggested wording that will be accepted by BMF from the broker's bank. It is suggested that members forward this wording to the bank when requesting confirmation:

" In respect of the money standing to the credit of the account held by the account holder the Bank is not entitled to combine any account with any other account or to exercise any right of set-off or counter claim against money in that account in respect of any sum owed to it by any other account of the account holder and that the title of the account sufficiently distinguishes that account from any account containing money that belongs to the account holder, and is in the form requested by the account holder. "

If the member is using a Solicitor's trust account instead, a confirmation will be requested from the solicitor that such an arrangement is in place and being used by the member.

APPENDIX 2 – BRBA BOAT BUYER'S GUIDE



New and Used Boat Buyer's Guide

boat buying made easy

This handy guide provides you with the essential questions that you should be asking your broker/dealer when purchasing a new or second-hand boat. Being well prepared will help to ensure that you avoid potential pitfalls.

BEFORE BUYING YOUR BOAT

- ✓ Is the broker/dealer a member of an association which operates a Code of Practice/Conduct that its members must adhere to:
 - British Marine Federation (BMF),
 - Boat Retailers and Brokers Association (BRBA) – (a group association within the BMF), or the
 - Association of Brokers and Yacht Agents (ABYA)?
- ✓ If you are buying a second hand boat, does your broker operate a properly administered designated client account¹, and will your purchase monies be kept in this account during the brokerage transaction?
- ✓ If you are buying a new boat either through a dealer or from stock, what are the payment arrangements, what stage payments, if any, are required and when does title in the boat pass to you?
- ✓ Is there marine finance on the boat and if so what are the detailed arrangements for payment and discharge of it prior to completion?
- ✓ What title documentation will the seller provide for the boat? For example;
 - Part I Registration, Builder's Certificate
 - Previous Bills of Sale
 - Evidence of RCD compliance
 - Evidence of VAT status

Ensure that you see a copy of and are satisfied with the seller's title documents before you enter into a binding agreement.
- ✓ Will your broker/dealer use an approved contract such as the standard BMF/ABYA contracts?
- ✓ Is the contract subject to a sea-trial and survey or is it unconditional? It is strongly advised that an independent survey is obtained when buying a second-hand boat.
- ✓ Will the contract contain a specification/inventory?
- ✓ At what stage does the boat become yours and when do you become responsible for insuring the boat, paying mooring fees etc?
- ✓ What are the arrangements for completion? For example, payment of monies, handover of keys and title documentation?

¹ An account in which client monies are held by a company, which should be completely separate from the company's current account.

New and Used Boat Buyer's Guide

ONCE YOU HAVE BOUGHT YOUR BOAT:

- ✓ If the boat is registered, will your broker/dealer arrange for transfer of the registration to your name?
- ✓ If the boat is not registered, will your broker/dealer take care of registration on your behalf?
- ✓ Consider specific training courses to help you get the most out of your boat. Visit www.rya.org.uk or www.marineleisure.co.uk to find RYA registered training providers

The process can be different depending on whether you are buying a new or second-hand boat. The RYA is able to provide its members with legal advice on all aspects of buying and selling a boat. Membership of the RYA costs £39 (£36 if paying by direct debit) a year. Benefits include access to free legal advice on all aspects of boating within the UK, it also includes discounts on their books, such as 'Buying a Second-hand Yacht' and 'Buying a New Yacht'.

The BMF and BRBA Code of Practice require BMF members involved in brokerage to operate dedicated client accounts to handle customer monies².

THE BRITISH MARINE FEDERATION (BMF)

is the trade association for the boating industry. It has over 1500 members drawn from both the seagoing and inland sectors of the marine industry. Members include boat builders, holiday providers, equipment and electronics manufactures, clothing manufacturers and support services such as insurance. Members are required to abide by a Code of Practice which includes everything from providing quality goods and services to charging fair prices, which gives you peace of mind when buying from a BMF member. For a full, searchable, list of members visit www.britishmarine.co.uk

THE RYA

is for people who love being on the water, enjoying either; the freedom of cruising or the thrill of racing, whether under power or sail. Above all, the RYA is here to help beginners and experts alike get the most from their time on water through a host of excellent member services and benefits and internationally renowned training courses. For more information see www.rya.org.uk

THE ASSOCIATION OF BROKERS AND YACHT AGENTS (ABYA)

is the UK professional association for brokers, dealers and distributors for both new and second-hand boats. All members are required to hold Professional Indemnity and Public Liability insurance and operate a Client Account. Events to support members' continuous professional development are organised. The ABYA Code of Practice can be seen on the ABYA website at www.abya.co.uk, as can a full list of members and their contact details.

² Holding a client account became a requirement for BMF/BRBA members involved in brokerage in July 2008. These members must provide evidence that their bank confirms that it considers the client account to be completely separate from the company's current account or that they have an arrangement with a solicitor to hold client monies on behalf of clients during the brokerage transaction. The operation of such an account should provide better protection for client monies.



9. STUDENT ASSIGNMENT

On a single side of A4 prepare a CV/advertorial (an advertisement that has the appearance of a news article or editorial, in a print publication) that represents your skills and services as a Yacht Broker.

In no more than 250 words describe what you believe to be the 4 greatest challenges facing a yacht broker today. Include a word count with your answer.

