

## VERSION CONTROL

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This guide is intended to provide outline advice for freelance professional skippers in relation to their insurance arrangements for their freelance skippering work. Freelance professional skippers should ensure that they understand the insurance arrangements applicable in relation to their work. This may involve discussing the insurance position directly with their clients.

**I am employed by a boat owner / charter company to skipper their yacht. Do I need my own insurance?**

If you are an employee, your employer should insure you against the risk of you causing damage to their yacht and the risk of liability arising from personal injury or property damage caused by you to a third party. You should, however, check with your employer that this is the case.

**I work as an instructor at an RYA Recognised Training Centre. Do I need my own insurance?**

Whether you are employed by the Centre or self-employed, it is a condition of RYA Recognition that a Centre insures all of its instructors against the risk of an instructor causing damage to a yacht used by the Centre and the risk of liability arising from personal injury or property damage caused by an instructor to a third party.

**I am a freelance professional skipper working on various yachts. Do I need my own insurance?**

If you are covered by each yacht owner's insurance policy against the risk of you causing damage to their yacht and the risk of liability arising from personal injury or property damage caused by you to a third party then you should not need your own insurance.

This is likely to be the most cost-effective and robust solution for the occasional freelance professional skipper but it requires each owner's agreement and could not be achieved unilaterally by you.

Also, while some yacht insurance policies will accommodate their insured owner hiring a freelance professional skipper for a particular voyage (e.g. for a voyage that the owner doesn't feel sufficiently confident to skipper themselves), possibly for a small additional premium, many still tend to expect freelance professional delivery skippers to hold their own insurance (despite the fact that it is not widely available on the UK insurance market).

**Why is freestanding freelance professional skipper liability insurance not more widely available in the UK?**

Although the largest component of the risk that a freelance professional skipper needs to insure against is likely to be the risk of causing personal injury to those on board the yacht they are skippering (or, indeed, anyone else), a significant part of a skipper's potential liability arises from the risk of damaging their client's yacht. However, the risk of damage to or loss of the yacht is also likely to be insured by their client yacht owner.

In the event of substantial damage to or loss of the yacht caused by a freelance professional skipper's negligence, the yacht's owner or their insurer is likely to try to reduce their outlay by claiming against the skipper. Although the likelihood of an incident occurring that gives rise to a claim against a freelance professional skipper (either by a person who has suffered a personal injury or by the owner/insurer of a damaged yacht) is arguably lower than the likelihood of an incident involving an amateur skipper, the involvement of a professional skipper nevertheless has the potential effect of transferring the risk from the yacht's owner (and their insurer) to the skipper (and their insurer).

Given that, compared to the yacht insurance market in general, the market for freestanding freelance professional skipper's insurance is relatively small a handful of claims against freelance professional skippers could have a disproportionate impact on that market. As a consequence, freestanding freelance professional skipper's insurance may simply not be commercially viable for many insurers.

### **If I do need a freestanding freelance professional skipper liability insurance policy, where can I get it from?**

Freestanding freelance professional skipper liability insurance is available as part of some broader UK marine trades insurance policies. The premium for a general marine trades policy is likely to be prohibitive if you are an occasional freelance professional skipper but the breadth of cover might be attractive to you if you are a full-time professional. Some potential contacts for such policies are listed below.

Freestanding freelance professional skipper liability insurance is also available to UK citizens from several German insurers. The premium for such a policy is likely to be significantly lower than that for a general marine trades policy but the breadth of cover is also likely to be narrower. As with any insurance policy, you must read the policy wording and any schedules carefully to ensure that the policy covers the risks that you are concerned about. Some potential contacts for such policies are listed below.

### **Why can't I just use my contract with my client to exclude my potential liability as skipper?**

You could try to limit your exposure to your clients (although not to third parties) through your contractual arrangements with your clients. There are, however, legal reasons why such an approach would only have limited effect.

Under the Consumer Rights Act 2015, a trader (such as a freelance professional yacht skipper) cannot use a term in a contract to exclude or restrict their liability to a consumer (such as a private yacht owner) for death or personal injury caused by the trader's negligence. As a consequence, the only real protection available to a freelance professional yacht skipper against this risk (apart from not being negligent in the first place) is likely to be insurance.

As regards the risk of causing damage to a yacht or other property, an attempt to use a term in a contract to exclude or restrict a professional yacht skipper's liability to a private client for property damage caused by the skipper's negligence will only be effective if it is "fair". Although the RYA is not aware of any reported cases on this point, in the RYA's view an attempt to exclude a skipper's liability completely is highly likely to be considered unfair, particularly since it is settled law that a skipper *is* generally responsible for the safety of their vessel and those on board.

A provision that limits liability, on the other hand, is more likely to be considered “fair”, particularly if it bears a direct relationship to the sums that are readily insurable under the skipper’s insurance policy.

In light of the above, although you would be well advised to enter into formal contracts with your clients and such contracts could be used in conjunction with appropriate insurance to reduce your potential exposure, you should not rely on contractual limitations of liability *instead of* appropriate insurance.

### **Contact details for potential insurers (as at September 2018)**

#### *Marine trades insurers*

DeNovo Underwriting Agencies Ltd, Quay View, Admirals Court, Quay Road, Lymington, Hampshire, UK, SO41 3ET, 01590 670055 (<http://www.denovo-group.com/>);

#### *Skipper’s liability insurers*

Pantaenius UK Ltd, Pantaenius Marine Building, 1 Queen Anne Place, Plymouth, PL4 0FB, 017 52 22 36 56 (<https://www.pantaenius.com/uk-en/insurance/skipper-liability>)

Deutscher YACHT-POOL Versicherungs-Service GmbH, Schützenstraße 9, D- 85521 Ottobrunn, +49 (0) 89 - 609 37 77 / 78 ([http://www.yacht-pool.com/skipper\\_haftpflicht1.0.html](http://www.yacht-pool.com/skipper_haftpflicht1.0.html)).

Please note that the insurance market in this field is fluid, particularly at present with Brexit negotiations.

If you have any queries, questions or comments on the information contained in this leaflet, kindly contact the Legal Team on 023 8060 4223 or [legal@rya.org.uk](mailto:legal@rya.org.uk).

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