

## ABYA CODE OF PRACTICE

Terminology: "Brokers" sell second-hand boats on behalf of the owner. "Yacht Agents" includes all new boat sales personnel, dealers and distributors and part exchange sales.

### 1 Introduction

The Association of Brokers and Yacht Agents (ABYA) exists to promote the highest standards of professionalism and expert knowledge in the field of yacht sales, and expects high standards of its members. Membership is only open to existing practising brokers and new boat sales personnel with a proven track record in the industry. For all grades of membership there is rigorous scrutiny of the applicant's work. A Continuous Professional Development scheme exists to ensure that members update their knowledge regularly, and Members' work is monitored on a regular basis. The Association holds regular training Seminars and Forums in house and maintains close contact with other professionals in the marine industry such as Law firms and Insurance houses, many of whom are "partners" to the Association. All members are required to carry Professional Indemnity insurance.

### Grades of Membership

**Associate Member** – The entry grade of membership. Those who undertake the ABYA "Introduction to Brokerage" course receive automatic Associate membership, free for the first year, provided they are working in brokerage and hold appropriate PI insurance. They will be invited to remain as members at the end of the year, at the currently applicable membership fee. Associates should not generally remain at this grade for more than three years. Applicants who have not undertaken the course but can show evidence of their experience by submission of documentation, 2 professional references and evidence of holding appropriate PI may also be admitted as Associate Members.

Associate Members may apply to up-grade once they have been engaged in boat sales continuously for at least three years immediately preceding the application.

**Full Member** – Upgrading to Full Member status is achieved by application to the Committee. This is open to Associates of at least three years' standing and who have been actively engaged as a principal or Senior Broker, have gained a good reputation, are capable of acting in their own right in conducting business, and of dealing with



yachts and small craft of various types and materials. Experienced brokers or new boat sales people may apply to enter directly as Full Members. If the applicant has not been a member for three years or at all but has been actively engaged as principal for a continuous period of ten years the Committee may admit him as a member on account of his outstanding achievements. There are also "Fellow" and "Honorary" grades of membership, granted by the Association in recognition of exceptional services to the Association or the profession.

Members are encouraged to use the ABYA logo and letters "ABYA" on their stationery and advertising. Electronic versions are available from the secretariat.

## 2 Preamble

Every Broker or New Boat Sales Member of the Association shall observe this Code of Conduct in line with the Memorandum and Articles of Association of the ABYA and YBDSA. ("Member" includes Associate, Full, Fellow and Honorary Members).

It should be noted that there are local variations to practices, particularly on the inland waterways.

The use of the masculine is intended to include any ABYA Member, male or female.

The purpose of this code is to define the rules of professional conduct to be followed by all Members of the YBDSA, whose sub-association is the Association of Brokers and Yacht Agents (ABYA).

The YBDSA and ABYA shall not be held responsible in any way for any work undertaken by any Member whether in compliance with the Code of Conduct or outside its guidelines.

## 3 Types of service that may be offered

- New boat sales
- Brokerage on second-hand boats
- Part Exchange
- British Registration
- Checking of Legal Title
- Checking compliance with the Recreational Craft Directive (RCD)
- Tonnage Measurement Surveys
- Checking VAT status of the vessel
- Bill of Sale
- Assisting with arrangement of finance

3.1 The ABYA Member shall ensure he is correctly registered under the FSA regulations if he is offering and arranging finance, and registered as a High Value Dealer if he takes, or is likely to take, cash payments at any time.

3.2 The Member shall set up a Client Account, designated as such, and identified at the Bank as such, where he shall hold all client monies, as these monies are held in trust for the client and are not to be used for company purposes.

3.3 The Member who sells boats as Part Exchange shall be aware of his

responsibilities and shall ensure that he has good title to pass to the purchaser. As a commercial vendor he is bound by the terms of the Sale of Goods Acts including, inter alia, that the goods shall be fit for the purpose. In the case of a defect being found, the burden of proof for the 6 months after the sale is on the seller to prove the defect was absent at the time of the sale; thereafter it is for the purchaser to prove that it was.

#### 4 Professional Conduct

4.1 ABYA Members shall discharge their professional responsibilities with integrity and shall at all times act and report in a fair and factual manner. They shall be independent of all other parties unless working in conjunction with another sales company.

4.2 ABYA Members should acquaint themselves with the ABYA Guidance Notes and abide by these notes in their dealings.

4.3 Members should acquaint themselves with the Memorandum and Articles of Association of ABYA and of YBDSA (Holdings) Ltd.

4.4 Professional advice is confidential to the instructing Client and may normally only be disclosed to a third party with the express permission of that Client.

4.5 They shall not offer any hidden benefit to any third party. No ABYA Member who is acting on behalf of a client shall accept any hidden benefit from any party to the sale.

4.6 If a Member knowingly has, once had or acquires in the future, a financial or other vested interest in a vessel, product or service which he has been asked to offer for sale, he shall declare that interest to his Client, either at the time or at any future time when the member first becomes aware of such an interest.

4.7 An ABYA Member is not empowered to commission work on a vessel without prior instructions from the owner or his representative.

4.8 An ABYA Member acting as an independent consultant should disclose any possible conflict of interest and should not undertake work where his independence could be influenced in any way which would affect his obligation to the instructing Client.

4.9 An ABYA Member should at all times present a fair, objective, and unbiased opinion on the potential market value of the vessel, maintaining his independence and impartiality at all times.

4.10 An ABYA Member should act at all times with impartiality with respect to creed, gender, nationality or disability of the persons he is dealing with.

4.11 The Client should be advised at the time of listing of the vessel of the amount of the commission or other fees and any additional expenses to be charged and whether VAT is payable.

4.12 The Member is strongly encouraged to use a written Listing Agreement when taking instructions from the client before offering the vessel for sale. He should also prepare a detailed inventory of the vessel to be offered for sale and agree this with the client for the avoidance of

doubt at a later date. The inventory should include the following items that are to be left (as applicable):

- All mechanical, electrical and electronic equipment
- Any sails (if applicable)
- Liferaft
- Tender
- Anchor(s)
- Spare warps etc.
- Fenders
- Charts
- Owner's Manual
- Technical Manual
- Any soft furnishings
- Other removable objects

4.13 The Member should ascertain and, if possible, obtain at an early stage from the vendor the documentation he has available to prove title, compliance with the RCD (if necessary), evidence of VAT payment (or similar payment within the EU), or VAT exemption, Registration, outstanding finance, Bills of Sale from previous owners and the Builder's Certificate. A new Bill of Sale from the current owner to the new owner must be completed and passed with all documentation pertaining to the vessel to the new owner on completion.

4.14 The Member shall provide a written Sale & Purchase Agreement as between the two parties which should be signed by both parties. Any amendments shall be agreed and initialled by both parties. This should be done at an early stage and include any deposit payment, and other terms relating to the timescale for survey, sea trial, etc. to ensure there is no misunderstanding at a later stage. NB: variations on the process on the inland waterways.

4.15 The Member shall check as far as he is able whether there are any outstanding mortgages, liens or bills relating to the vessel (e.g. mooring fees, chandlery bills) and should settle these from the completion monies before sending the balance to the vendor.

4.16 The Member shall send the balance of the completion monies to the vendor as soon as is practicable, once all the paperwork has been completed.

## 5 Complaints Procedure

5.1 If a Client has a matter of concern in respect of the service he has received, he should initially take this up with the Member concerned, so that he may have the opportunity to clarify the situation or suggest a remedy, etc.

5.2 If the Client is not satisfied they may then notify the matter to ABYA - (providing the broker or sales person is a member) who will refer the matter to their Disciplinary Sub-Committee for consideration if it is thought to be a matter of professional misconduct. This sub-committee comprises senior members of the Association who are experienced in boat sales matters. A "Complaints Protocol" form will be sent out to all complainants setting out the information required before

the committee can meet to decide on the issue.

5.3 The disciplinary sub-committee will make a judgement based on the information supplied to them at the outset. Once this decision has been made there will be no scope for further discussion. It is therefore highly important that all the relevant evidence is supplied at the outset.

5.4 Sanctions may be applied to the Member by the Disciplinary Sub-Committee if appropriate including one or more of the following:

- Calling the member for interview so that he may state his case to senior Company members;
- Removal from the Company's web site members' listing and from any other publications produced by the Company (which may be rescinded by agreement of Committee at a later date);
- Demotion by a grade of membership (which may be rescinded by agreement of Committee at a later date);
- Suspension (which may be lifted by agreement of Committee at a later date);
- Expulsion of such member.

5.5 The Association will use its best endeavours to achieve a resolution on behalf of their member and the Client, but cannot become a party to the proceedings.

5.6 Note that for matters which are the subject of a potential or actual technical complaint and which may proceed to law, the matter is potentially sub-judice and the sub-committee may not take any further action until it is resolved and they may investigate any possible contravention of the rules of the Association.

5.7 Should a resolution not be achieved, the matter may be referred to arbitration or conciliation, subject to the agreement of the two parties, the choice of arbitrator to be similarly agreed.

5.8 Clients should be aware that the Member is required to advise his Professional Indemnity Insurers immediately on notification of any matter which may become the subject of a claim and may not thereafter be permitted by his insurers to enter into direct correspondence with the client.

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ABYA can investigate complaints against members regarding professional misconduct – please request a copy of the Complaints Protocol from the ABYA office.