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## **‘Our Word is Our Bond’. Shipbrokers in the 21<sup>st</sup> Century – a Snapshot of the Profession and are they Really Needed?**

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**Steve Dougal** (speaker/author), Century Marine Services Ltd, UK

### **SYNOPSIS**

The world of commerce, and shipping in particular, has been revolutionised over the past 15 years with the advent of rapid and cheap communication. One recent view was that not only does such a revolution enhance our industry, it also reduces, if not supersedes, its reliance on the need for middlemen – shipbrokers in particular. After all, why pay a commission when all you need do is pick up the telephone or send an email to sell or charter a tug? It sounds very easy and attractive. The fact is, however, that the communication revolution has matured and shipbroking still remains as buoyant as ever. Rather than diminishing, shipbroking has actually increased its presence and remains a very successful part of the shipping industry.

So what does a shipbroker actually do and what use is this profession in the towage and salvage industry? Do brokers really add value to the business and does the phrase ‘Our Word is Our Bond’ still have meaning today? In declaring an interest here, the author has been a shipbroker for more than 20 years and so this paper looks at the profession from a broker’s point of view.

### **OVERVIEW OF THE PROFESSION**

#### **What is a shipbroker?**

Shipbrokers are not merely an introduction agency. If this was their only value, then most brokers would agree that their commission was a waste of money. Why use a broker when a little investigating and several phone calls or emails might suffice? A shipbroker’s role is actually much more than this. In law, the role of a shipbroker is that of an agent, a servant of the client. The introduction may form a part of that role, but it is a minor part.

Perhaps a more important part of the remit is to negotiate as effectively as possible to obtain the best possible terms for their client. But there are a number of other tasks in addition to those of introduction and negotiation. These will include post-fixture work, provision of market intelligence, practical and contractual advice, as well as diplomacy. Occasionally there is some operational assistance given as well.

To carry out their job effectively, a broker needs a good intelligence system. There is little point in a client asking a broker to cover the market if that broker is unable to do so through lack of market knowledge in the area concerned. Information is the key and the more information there is to interpret, the better the service the broker will be able to deliver.

A good broker will require a substantial knowledge of commercial, technical, geographical, legal, historical and cultural information as well as having the ability

to apply it. Such information will come from an array of sources including owners, charterers, shipyards, managers, publications and other brokers. Much will originate from written correspondence, but a substantial amount will be obtained through verbal communication. For good reason, such information is not always easily obtained as much of this is confidential and market sensitive so it must be used wisely. An unwise broker may soon find their sources of information drying up if they are no longer trusted.

#### **Specialisations**

Shipbroking is a generic term that encompasses various specialisations including chartering and sale and purchase. Within these areas there are numerous other specialisations including tanker, gas, dry cargo, container, heavy lift, offshore and towage and salvage brokers to name a few. The importance of specialisation within shipbroking cannot be underestimated, as a detailed knowledge of a particular area is required to operate effectively. It is not possible to be all things to all people.

#### **Chartering**

Tug chartering requires a detailed knowledge of tug movements that must constantly be updated to be relevant. While towage and salvage broking usually go hand in hand, they require two very different styles of operation. Most brokers will claim to be available 24 hours a day (in my experience they seldom are), but the salvage broker will truly be available 24/7. This audience needs no reminding that many casualties occur out of

normal office hours. The salvage broker must therefore have a duty rota to ensure that a broker is immediately available when required. They will have numerous clients who might rely upon their information to assist them in making a decision that has life or death implications.

When an owner requests a broker to obtain salvage or emergency tug assistance for their vessel, the expectation is that the broker will offer the fullest choice of available tugs as quickly as possible. Speed is of the essence and one or two calls to a broker can save valuable time. Those brokers who specialise in this field offer a 24-hour call system to cope with such eventualities. While the first advice they offer is that of availability, their intimate understanding of the towage and salvage markets mean that they are also able to offer some quick but basic advice on the suitability of a particular tug or salvor to undertake the operation. Such advice, both practical and commercial, can be invaluable to a ship owner making the required decision quickly.

Towage broking generally requires a less urgent style of operation. It doesn't require a 24-hour contact and is therefore attractive to many other broking houses. It does, however, require as much knowledge of tug availability as that of the salvage brokers, if only for reasons of competition. If a broker is given an order for a particular towage, they want to be in a position to offer the most optimum tug for that business quickly. Knowing where the closest, most suitable tug is to a particular tow is the knowledge that will most likely clinch that particular deal.

In both towage and salvage broking, the database is an invaluable tool but only insofar as how often it is updated. It is important that the broker's initial view of the market will be as accurate as possible in order to identify the optimum units quickly. Once this has been done they can then sweep up the rest of the market for any secondary possibilities that might be considered by their client.

## **Sale and purchase**

The amount of effort and information required by the professional sale and purchase broker is no less than in chartering, but the information gathered will be used in a slightly different way. The level of monetary investment involved means that negotiations will be more protracted and fewer deals are done, even within the recent heady markets. But, here too, the broker needs to maintain accurate information of tonnage for sale in addition to records of vessels sold. Such information is of utmost importance to the broker when formulating advice to their clients about buying and selling, as well as when undertaking valuations.

Deep knowledge of the market and identifying current buyers and sellers is a crucial requirement. A client who is buying will want to know quickly what candidates are available in the market both openly and privately. Without good information, it is unlikely that the broker will be able to effectively service their client's needs.

Circulating a vessel for sale is also an important duty for the broker. But different approaches might have to be taken depending on the client's instruction and market circumstances. A vessel might need to be circulated widely to attract a possible buyer and brokers will often do this to ensure they are giving their client the coverage they require.

Some owners, however, have no desire to see their vessels offered all over the market as that could risk giving out the wrong signal. Therefore it is necessary to circulate a vessel in a more surgical way by pinpointing and approaching particular buyers. There are valid arguments for both scenarios and the approach taken will depend upon the particular circumstances of each case.

In addition to data gathering and retention, it is important for the sale and purchase broker to be aware of the documentary and financial procedures required to sell a vessel from one party to another. Detailed knowledge of documents such as Bills of Sale, Non Encumbrance Certificates, Deletion Certificates and Confirmation of Class is essential. Such knowledge can only be gained through thorough training and experience.

## **IMPORTANT ISSUES**

### **Trust and confidentiality**

The motto of the Baltic Exchange and the Institute of Chartered Shipbrokers (ICS) is: 'Our Word is Our Bond'. Members of both organisations are expected to abide by this statement. While few brokers in the towage and salvage industry are members of the Baltic Exchange or the Institute, this motto symbolises the importance of ethics in trading<sup>1</sup>. This principle should underpin the broker's entire operation as made clear by the ICS who say that: 'professionalism couples trust and integrity with knowledge of one's business'<sup>2</sup>.

However, unless brokers are members of these organisations, there is little regulation other than that of reputation, and it is a sad fact that some brokers have scant regard for any regulation, let alone their own reputation. Within the realms of ethical practice also lies the responsibility of discretion. A shipbroker will be privy to many commercial secrets and is expected to keep them. Owners and charterers will need to be comfortable with the broker as well as with the opposite party if business is to be done. If the broker cannot be trusted to keep information confidential then the client/broker relationship needed to develop the business will not happen. The client is, after all, delegating an enormous responsibility to the broker and this responsibility should not be taken lightly.

Unlike cargo ships or tankers, there is little reporting of tug charter rates or sale prices in the towage and salvage market. This is mainly because of the intimate nature of this market. Owners and charterers, buyers and sellers, prefer to keep such information to themselves and expect the brokers involved to do so

too. Maintaining such confidentiality should be second nature to the broker and there is no excuse for failing in that responsibility.

## **A broker's involvement**

Shipbroking is all about relationships – a broker is there to introduce business and to conclude that business for their clients on the best possible terms. In other words, to get the best out of a negotiation they must manage the negotiation as effectively as is practical. Owners, charterers, buyers and sellers all have their own agenda and the broker or brokers aim is to ensure that all parties in the transaction feel they have achieved what they realistically wanted. There is a risk that once the introduction is made and the negotiations are running smoothly, the contracting parties (and sometimes the broker) may feel that the broker can take a back seat while the principals sort it out between themselves. This is more often than not a mistake and it is a habit that should be avoided if possible.

The history of negotiation is littered with the wreckage of failed deals where this has happened and there are many others where the broker is brought back in the midst of an acrimonious dispute to pick up the pieces. It should be remembered that the parties on either side of a negotiation are there to protect their individual interests (their lord and master, shareholders etc) and the broker or brokers in the middle will often act as a shock absorber to some of the more unrealistic or ill-informed demands that could jeopardise the deal.

There is also a growing temptation that once a deal is fixed, the parties can dispense with the broker's services for any of the options or subsequent deals. Putting aside the ethical and legal issues over this, and even when done with the best of intentions, it is a false economy. Keeping the broker involved will bring its own dividend.

This is a view supported by the chartering department of a major European charterer in offshore supply vessels. Responding to a number of questions about this issue from owners, they felt obliged to explain why they prefer to use brokers to charter their vessels, even when they had their own chartering department and had previously fixed vessels with that particular owner. Having undertaken a market study, they explained that by continually using brokers, they could more easily ensure adequate market knowledge and the coverage resulted in wider competition for their requirements. They also concluded that in addition to the significant knowledge benefits, there was actually no cost increase for the charterer when utilising shipbrokers versus dealing directly with ship owners. In other words, the shipbroker is a very cost effective tool that enhances their operation. The same principle will apply in buying and selling vessels.

## **So what makes a good broker?**

Brokers require a variety of skills to carry out their business. Tact, and the ability to develop and sustain

relationships, must rank very highly within their repertoire. A client has a wide choice of brokers to choose from and competition for business is fierce. The broker needs to justify their client's trust and must constantly ask themselves: "Why does this client wish to use my services and am I adding value to this business?" A good broker will be able to answer that question without hesitation because the client/broker relationship will have developed to such an extent that the broker will continually be aware of the client's needs. They will know their clients' expectations.

The digital revolution has made the shipbroking market more competitive than ever and more efficient in terms of communication. The benefits of this competition are well known, as is the ability to communicate more efficiently than ever before, and both are connected. Competition ensures the broker remains on his or her toes and the ease of communication allows the broker to build up a better picture of the client's needs and to gather the information and knowledge required to provide a professional service.

But there is a hidden danger in the communication area that can allow the pretence of respectability without actually giving it. Merely circulating a vessel available for charter or for sale doesn't indicate that the broker sending it has experience or is even reputable. That is without going into the question of authority. Most owners and brokers will be bombarded on a daily basis with circulars showing tonnage for charter or sale and enquiries for particular vessels. Many circulars will come from known entities, but a substantial number come from unknown people or companies. The intent of those messages is that the sender wants the receiver to entrust the negotiation of a contract worth hundreds of thousands, possibly millions of dollars to someone that they have never heard of before. They pose a considerable risk to the parties involved but it happens surprisingly often.

Perhaps the most effective inoculation against such a risk is a combination of the client/broker relationship and common sense. Common sense is straightforward, but the relationship between the client and the broker is extremely important. The client needs to know that they will receive the service and trust they require while the broker needs to understand the client's needs and offer that trust and integrity.

Just as an employer checks the references of a new employee, so should a client check the references of a broker they haven't previously used. The broker will be their ambassador, so the broker too will require some comfort regarding the client's background. The client/broker relationship is key and the importance of this cannot be underestimated.

Most training for brokers in the towage and salvage industry tends to be hands-on, which is important to develop the broker's skill and intuition. However, it is a shame that more new entrants to the profession are



not encouraged to undertake the excellent education programme and examinations of the Institute of Chartered Shipbrokers. Undertaking these courses can surely enhance the profession's strive for excellence as membership of the Institute is recognised and respected throughout the world.

## The Dilemma

In the past it was traditional for a broker to act on behalf of one party with another broker working on behalf of the other party. In between there might be a further one, two or even more brokers. This scenario was mainly due to communication and local reasons, but with so many brokers in the chain it could be a recipe for disaster. But it was the only way that worked prior to the communication revolution.

Modern communication has solved the problem, with the result that it is now more common for just one or two brokers to be involved. With two brokers the responsibilities are clear in terms of who is acting for which party, but what is the situation when there is just one broker between both parties? What is the broker's duty and who do they act on behalf of? Does acting on behalf of both parties mean a conflict of interest or can it actually work?

For the negotiation to be successful it needs both parties to be satisfied that they have achieved what they realistically wanted and the broker, having been appointed by one of the parties, will have to manage this effectively. The relationship between broker and client is indeed crucial in that the client who appointed the broker expects the broker to work ardently on their behalf, yet manage the other party's expectations as well. In this sense the broker is the servant of both the client and of the negotiation.

Much depends on the individual circumstances and the matter could easily be ignored until a dispute in the negotiation occurs when the broker is called upon to help resolve the argument. However, while it is acknowledged that a broker could act for both parties as long as the broker remained neutral in the negotiation, this is more easily said than done. It should be made clear from the start on whose behalf the broker is working.

## Payment

Salvors and brokers are among the few professions that work on the basis of 'no-cure, no-pay'. The client gets an exceptional deal in that, until there is a result, there is nothing to pay. Indeed, even if the broker is appointed by a charterer or buyer, it is generally the owner's responsibility to pay the bill. Like any profession, a broker is entitled to a fair day's pay for a fair day's work and their efforts are not cost-free. In addition to their salaries, brokers run up huge communication bills as they need to be aware of what is happening in their market. They also need to travel to attend overseas meetings, increase their knowledge and develop the relationships so important to the profession.

To ensure the client gets the best possible service, brokers spend a great deal of money maintaining the most up to date publications and database. This is not cheap and as information is the broker's lifeblood, investment in this area is a requirement, not an option. This all needs to be taken into account when understanding and negotiating the level of commission. Brokers are not a free information service. Equally, greedy brokers do nothing to enhance their profession by demanding unreasonable levels of commission.

So what is a reasonable commission? The amount will vary on each deal, but the industry norms are usually (per broker) about 2.5-5 per cent on a voyage charter, 1.25 per cent on a time charter and 1-2 per cent on a sale. Commissions on salvage awards will also vary depending on the likely award. In some transactions there is a case for a lump sum, especially in very small transactions where the usual percentage makes no sense against the work a broker has done (remember that the work for small and large transactions is normally the same, although in many cases the small ones will entail more work).

## CONCLUSION

### Are brokers really needed?

This paper has given a brief overview of the ship broking profession and has attempted to answer the question: 'Are brokers really needed in the 21<sup>st</sup> century?' The author Mark Twain once said that news of his death was greatly exaggerated and the same could be argued in respect of ship broking. As a profession it has continued to grow in presence and influence, which is a clear indication of the demand for its services. Such growth is a testament to the hard work and dedication given by many brokers to their clients and to the industry as a whole. Rather than seeing the communication revolution as a threat, most brokers have adapted to the change in such a way that has brought benefits to their clients and themselves. But it must not stop there and the profession should continue to strive for greater excellence by improving its training and ethical standards. It must do much more to encourage its new entrants to take the educational courses offered by the Institute of Chartered Shipbrokers.

There will always be certain individuals or companies that let the profession down, but they should not be allowed to cloud the sterling work undertaken by most brokers. The profession could, however, take steps to enhance its reputation and whilst shipbroking in the towage and salvage market is a 'free market', it is a shame that some form of regulation, like the Baltic Code, is not in place. However, there is no doubt that such regulation would be difficult to enforce and, therefore, reputation remains the best form of regulation we have.

'Our Word is Our Bond' is an ethic from the last century, but its importance in today's world of rapid and cheap communication is as strong as ever. Unquestionably, the communication revolution has been

responsible, both directly and indirectly, in promoting a greater emphasis on the relationships required to maintain the level of service a client expects from the shipbroker. More trust is placed in the shipbroker than ever before, especially in terms of verbal communication, and the outcome of any negotiation is much enhanced by that trust and relationship between the broker and client. It is the main reason why shipbrokers remain relevant in the 21<sup>st</sup> century.

## REFERENCES

<sup>1</sup> *The Baltic Code*, The Baltic Exchange London, 2009; [www.balticexchange.com/media/pdf/TheBaltic\\_CODE.pdf](http://www.balticexchange.com/media/pdf/TheBaltic_CODE.pdf); accessed 10<sup>th</sup> November 2009.

<sup>2</sup> *Professionalism*, Institute of Chartered Shipbrokers, 2009; [www.ics.org.uk/html/professionalism.htm](http://www.ics.org.uk/html/professionalism.htm); accessed 15<sup>th</sup> November 2009.

