

# International **Tug & OSV**

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# Check vessel condition pre-purchase

Purchasing a pre-owned vessel is a gamble in many respects, even more so when buyers do not have access to up-to-date maintenance records, says Simon Tatham.



► Simon Tatham.

**Hull underwriters pay out more for engine damage than most other claims and according to CEFOR, the Nordic Association of Marine Insurers, too many of these instances occur shortly after a change of ownership. If all maintenance records were handed over by sellers and available for inspection on pre-entry condition surveys, defects would, they suggest, be more readily picked up and addressed.**

Most charterparties and other agreements for tugs, heavylift vessels and OSVs contain seaworthiness obligations and although the industry's 'knock-for-knock' regimes generally protect owners from claims by hirers for financial loss resulting from breakdowns, they do not generally protect against third party claims; downtime will be at owner's cost and there is a risk that insurers reject the repair claim on grounds of wear and tear. In cases where owners are exposed it will be no defence to say, following engine problems

during an early voyage, that he could not have known of the problem because the seller failed to deliver up full records.

Although Class records are routinely inspected by buyers, they will not contain maintenance records, engine wear and machinery overhaul reports, for example. Whilst a buyer still generally takes 'as is', the 1993 and 2012 Norwegian Sale Forms, which are prevalent, dispensed with the 1987 Form's requirement that a seller should inform Class of matters coming to his knowledge that would affect Class, in favour of a requirement that the vessel be sold 'free of average damage affecting Class'. Even though a recent decision of the English Court may make a claim against the sellers easier if the implied term of satisfactory quality is not specifically excluded, such recourse actions against a seller can be an uncertain or expensive solution. The problem is best avoided altogether.

Common-sense dictates firstly that the

pre-contract physical inspection should be thorough, and ideally performed by an independent surveyor. However, few sellers will volunteer to open up their engines for inspection and it is all too easy for a seller to go with the buyer who is happy to pay without asking awkward questions or demanding extensive maintenance records. From a seller's perspective furthermore, offering up records for pre-contract inspection simply risks buyers finding an excuse to negotiate down the price.

Secondly, a buyer should ensure that the draft MOA requires that full records are deliverable. NSF 2012 in this respect allows for the parties to insert an agreed list of additional documents to be handed over on or after completion which can (and should), of course, include all technical records but aside from the general phrase "other technical documents" at clause 8(f), there is no standard clause setting out the norm and arguably 'technical documents' merely covers manuals and the like, not records. These deficiencies can easily be addressed.

Even if full records are to be handed over with the vessel, including computerised records, the superintendent on site tasked with overseeing the physical handover will have other more pressing concerns on the day. Moreover, if the sellers' housekeeping has been poor and good records have not been kept or it is unclear precisely what has been archived ashore, buyers may be none the wiser, at least until a failure occurs.

There is no simple solution to this problem. The reputation of the seller, the apparent condition of the vessel and the demeanour of the crew and the sellers are in themselves obvious pointers for a buyer and, of course, in line with the maxim *caveat emptor*, "let the buyer beware". CEFOR proposes a regulatory solution, possibly an amendment to the ISM code. Meanwhile thorough pre- and post-contract inspections, a well-drafted MOA with a sensible list of technical documents and records, together with polite but tenacious insistence on delivery of records maintained ashore, will help reduce the risks faced by buyers and help ensure a smooth passage.

● Simon Tatham is a partner of Tatham Macinnes LLP and a founding member of its new service, TugAdvise.com. He has 30 years' experience in shipping law.

## New engine and control interface

**Raymarine has launched ECI-100, a universal engine and control interface for vessel builders and system integrators, designed to bridge the gap between engine instrumentation, drive-by-wire propulsion systems, and Raymarine network navigation systems.**

The ECI-100 collects and connects engine information to give the user simple and immediate access to engine performance data, fuel consumption and alarms, via a full range of customisable information screens on Raymarine's multifunction displays. Engineered for simplicity the ECI-100 is designed to be an affordable solution that integrates with Raymarine's Evolution

EV-2 drive-by-wire autopilot system.

Each ECI-100 is fitted with a standard DeviceNet port which connects directly into the industry-standard NMEA2000 or J1939 engine data bus, used by major marine engine manufacturers. ECI-100 then connects to any NMEA2000 network backbone using Raymarine's SeaTalkng cabling system. Each data port on the ECI-100 is independently powered and isolated, ensuring reliable and worry-free performance from both navigation electronics and engine systems.

Raymarine's new ECI-100 interface is designed to ensure that engine and navigation integration can be an affordable reality for virtually any size boat.

