

Regular surveys of a yacht that seems to perform perfectly well should not be viewed as an inconvenience, says barrister Benjamin Maltby, who explains why and when classification is necessary and the societies' vital role in keeping owners, guests and crew safe

An owner's guide to classification societies

Classification societies (also known as class societies) make an important contribution to maritime safety. Their engineers and surveyors are experts in the technical aspects of yacht construction and maintenance

They can have two distinct but related roles. The first is to research, establish and apply standards for the design, building and maintenance of trading ships and yachts. Known as the rules of the society, these standards are highly detailed and technical and cover the strength and integrity of the yacht's hull, engines and key safety systems but not aesthetic or operational elements. The experts' second role is to perform much of the statutory inspection work—required by international conventions — for smaller nations that maintain a registry for flagging yachts but do not have sufficient expertise of their own. The two roles can overlap. If a flag state's technical requirements are sufficiently similar to a society's rules, that society could undertake limited classification and statutory compliance responsibilities during a vessel's construction, which saves re-inventing the wheel. Further, under the rules of the society, the flag state administration may have to be informed if a yacht falls foul of the rules, which, in turn, may invalidate the flag state's equipment and safety certificates.

Societies often offer additional consultancy services, going beyond basic classification, during building and refits. It is also possible to have even fairly modest yachts built according to class rules, which are usually higher than those imposed by law and can boost resale value.

Classification is voluntary, unless a flag state requires it, typically by virtue of the International Convention for the Safety of Life at Sea (SOLAS). The Convention demands that certain yachts be designed, constructed and maintained in compliance with the various requirements of a recognised society, or with the equivalent flag state requirements. This applies to yachts that undertake international passages on any sort of commercial basis, and which

carry more than 12 guests or are of at least 500 gross tonnes, or both. Occasionally, flag states may insist on a yacht being classed by an approved society, irrespective of size or use. In any event, classification is often needed to reassure any banks that hold security on the yacht and would otherwise have no way of ensuring that the asset is not depreciating excessively. Owners of larger yachts may also find it hard to obtain insurance at reasonable rates without classification. For the insurers' peace of mind, policies commonly insist on the yacht being classed, and maintained in class, by a society agreed on by the underwriters, with all the experts' recommendations being carried out as directed. If this is agreed to in the policy but then not adhered to, insurers could walk away without paying a penny in the event of a claim.

In fact, the societies were a product of the fledgling insurance industry. When this new sector was developing at the tables of Mr Lloyd's coffee house in 18th-century London, it became apparent that the insurers' knowledge of the ships they insured was less than perfect. As construction methods varied, the vessels were classed according to build quality and condition. The idea worked, and Lloyd's Register was born. Insurance premiums could at last accurately reflect the risks, with higher build specifications and better maintenance being rewarded with lower premiums. Soon societies were being established around the world.

There are now dozens of organisations worldwide providing classification services but only ten make up the proudly self-regulating International Association of Classification Societies (IACS). Members are independent and non-profit-making and provide services to nearly all the world's commercial and leisure tonnage. IACS itself also has the capacity to develop rules in conjunction with the International Maritime Organisation.

The initial process of classification involves assessments of drawing-board designs and attendance throughout construction or conversion. Once a survey has confirmed that these rules have



Alysia was built specifically for charter and complies to SOLAS. She can carry up to 36 passengers and is over 500grt

been met, a certificate of classification is issued. This summarises the standards met, the broad intended use of the vessel and whether she should be used only in sheltered waters. Crucially, the certificate is not an express guarantee of safety or seaworthiness, but merely evidence that the yacht meets certain standards.

Being maintained in class is achieved through regular surveys, which, to simplify matters, are carried out regardless of the yacht's circumstances. Surveys performed to renew the classification, known as special surveys, take place every five years, which can be extended by up to three months if necessary. The examinations can be surprisingly scientific in nature, with various tests conducted to assess the thickness of the hull, possible fractures and other forms of deterioration, as well as the condition of all the principal items of machinery and equipment. An intermediate survey is then carried out three months either side of the third anniversary. On top of this, annual surveys, which need not be so thorough, are conducted three months either side of the anniversary date.

Of course, yachts are often subject to modifications, as the owner's whims and new regulations dictate. They may also be subject to heavy-weather damage, accidents and even neglect. For these reasons, they will also be subject to ad hoc surveys.

Where any survey raises concerns, class can be suspended or withdrawn, depending on the nature of the problem. If it is rectifiable, the surveyor usually makes recommendations, known as conditions of class. Maintenance of the yacht in class then becomes conditional on the work being carried out.

A yacht may be suspended from class if the owner does not request a survey following an accident causing damage or following repairs or alterations, and will be suspended automatically if any of the regular surveys are overlooked. Class will then be withdrawn altogether following a six-month suspension. Details of suspensions and withdrawals, and the yachts concerned, are published on the Internet for all to see, including insurers.

Class surveyors have made serious mistakes in the past which have led to large claims. Societies are seen as having deep pockets and their liability cannot be limited by international convention in the same way that an owner's can. Where a society provides consultancy services going beyond its conventional remit, it would almost certainly be responsible for its mistakes, subject to the contract terms. However, the courts take a tender view of mistakes made when providing traditional classification services. Claims may be an uphill struggle, for the following reasons:

- The primary legal responsibility for seaworthiness normally remains with the owner
- Societies may specify where a yacht may operate, but they do not specify how she should be operated
- The society may have expressly excluded liability where a contractual relationship exists
- Surveys tend to involve selected sampling, rather than stern-to-stern inspections, and
- A similarly high level of expertise is required to challenge their views.

The British courts have ruled out liability towards parties other than the owner. In 1985 a yacht called *Marning Watch* was sold with a valid classification certificate, but so corroded that she was



Inspectors are present during the installation of a propeller

unseaworthy and worth considerably less than the buyer had paid. The buyer was unsuccessful in suing the society as the survey had not been requested by, or carried out for, the buyer, even though it had been undertaken with a purchase in mind. Societies could still be liable directly to an owner however. By contrast, the Continental courts take a less favourable view, with societies being found liable to third parties, although gross negligence must have been displayed.

Where societies undertake work on behalf of flag states, they often benefit from the state immunity of their masters. However, recent European Union legislation has raised quality requirements where societies are working in this capacity, and this legislation does entertain the possibility of societies being made liable for gross negligence, but nothing less. Where an owner had failed to disclose something which a society would otherwise be anxious to survey, it is unlikely that the society would be exposed to any liability.

Although legal recourse against societies is limited, they have much to contribute to safety and can help maintain a yacht's value. Classification should not, therefore, be seen as a pedantic exercise, performed just to keep insurers happy. The process brings to bear an independent and high level of expertise which should reassure present and prospective owners alike. □

Benjamin Maltby is an English barrister and independent yachting consultant. He began his career as a lawyer in the City of London with an International Group P&I Club, before moving to Cyprus where he practised with the leading Mediterranean marine and offshore law firm. He now provides impartial, multi-jurisdictional guidance on all aspects of the ownership and operation of large yachts.

Any errors or omissions are the author's alone. This article does not provide, or replace, legal advice.