

# Plain sailing: From yacht Captain to the Bar



## *Chayne Hodgetts interviews Captain Matthew Peak on law as a second career and his commercial shipping practice*

In a change of course, superyacht Captain Matthew Peak now combines his maritime background with his current civil practice as a commercial and shipping law barrister with Clerksroom. With many now coming to the law as a second career, his is just one example of how practitioners with previous career and life experience can retrain and thrive in modern legal practice.

### **Ship to shore**

So how did Peak go from ship to shore? “As a quick summary of when I decided to change career and go into law, my career as a captain not only involved the operational part of running super yachts – that is driving them around – but it also involved taking these ships into shipyards and overseeing their maintenance and original construction. As part of that aspect of the work, I was asked by an owner to help oversee a number of large new build projects in a German shipyard. During this four year period (although a new build is typically a fairly demanding and stressful task), I had more free time than I would have done when I was operational, when I was at sea. So, I thought it would be a nice idea to make use of this time and to study a Master’s degree, or to do a bit of postgraduate study. I thought law might be interesting because it would follow on from my maritime studies, as I had to do a business and law module when I did my Captain’s studies. This had sort of whetted my appetite. One of the reasons was originally to find a route ashore, but I hadn’t considered a complete career change until I actually started doing my legal studies, and realised I enjoyed it so much. That that was 10 years ago – I did all of my various courses part-time, so I could continue to work, but I took a number of breaks, then I undertook pupillage, and I am now in practice.”

### **Law as a second career**

On his experiences of law as a second career, Peak reflects: “I was aware that a lot of people decide to take law as a second career, so I didn’t think that I’d be particularly atypical. I’m a bit older, now in my mid-forties, and I thought I’d feel more out of place, but I didn’t really. The legal industry has been very accepting. I thought when I went to legal events and that type of thing, that people would just assume that I’d been practising for years because of my age, but it wasn’t the case at all. It didn’t seem incongruous. On the actual change itself, I changed from what was a very multidisciplinary career as a Captain to something which is much more focussed on one type of discipline. I understand criminal justice practitioners, especially in the junior stages, spend a lot more time running between

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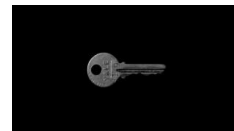
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“Crew do have rights, and I think a lot of crew members didn’t realise that beforehand. They thought they were in some sort of legal vacuum...”

courts, with more time on your feet, but what I've been doing has been largely desk based, focussed on particular legal problems. I did the first part of my pupillage entirely in lockdown, meaning that even with the trials I was involved in, they were also from my desk over Zoom. Since then, things have changed a little, but still the majority of my hearings are virtual, so a very different role to that of a Captain. I enjoy it very much, but it has taken some personal adjustment. My pupillage was a fairly broad one in commercial law, which is the area of law that I want to continue to practise – and my specialist area within commercial law, given my background, is maritime law. I've also been acting as an arbitrator (having been headhunted) in a maritime dispute over the last year or so.”

### **Modern maritime matters**

Turning to discuss the most current legal issues in maritime and yachting law, Peak adds: “What’s interesting about yachting is it’s one of the global industries which has really, really expanded in the last two years, over the course of the pandemic – the amount of new builds (new super yachts on order) has gone up by 25 per cent year on year. When there are high value new builds, new projects of that sort of magnitude, being contracted, then invariably there is scope for disputes in some form or another. Where there’s the biggest crossover for me, the most likely call for specialist legal representation and advice (such as mine) – is at the inception of the vessel itself. There are the potentially new owners, there’s a shipyard, which has probably built a lot of yachts before, but they haven’t dealt with those owners. There are always a lot of contractors run by people who are sometimes new to the industry as well. There are also international boundaries and cultural codes which are different and diverse, so there’s lots to take into account for things to be a success – there is a lot of room for potential disagreement. And with the industry growing, the disagreements are going to grow as well. Also, arbitration clauses are generally written into most yacht refit and new build contracts. I think that, in some form or another ADR and in particular arbitration is going to be growing – along with the industry.”

### **Covid-19 and crews**

On the effect of the pandemic on yacht crews and operations (from a legal and maritime perspective), Peak opines: “I got off my last command in December of 2020, just over a year ago. It was during the pandemic – you’re in your own little weird bubble on board a yacht. The yachts still need to have crews, still need to be maintained so even at the height of the first lockdown most large yachts, that I knew of, were still fully crewed. The pandemic has made it more difficult to travel, as we all know. And the volume of paperwork, going from port to port, from an operational Captain’s perspective, has also increased. With this the risk of making administrative mistakes that could cause problems which result in litigation in some form. I think from a legal perspective, there have been some interesting questions raised about whether or not there should be ‘mandatory’ vaccinations for crew – meaning if they were required under the express terms of an employment contract or under the Captain’s standing orders – and whether employers can require their staff to be vaccinated at all. In the case of crew members, it’s a lot more difficult to travel if you don’t have a vaccination passport or certificate. Some owners may also expect or demand that the Captain ensures all crew be vaccinated before they come aboard. But a lot depends on the yacht, the owners, and the itinerary. But if you’re on a large, busy yacht with a large crew, the crew often live in relatively confined conditions, where they can’t keep a distance – and crew, usually share a cabin with somebody else as well. Then, there are compelling arguments that the yacht owner could reasonably mandate for a crew member to be vaccinated, but I can see this inevitably being challenged in the courts (whether in the UK or here) and the legal position becoming clearer.”

### **MLC and yacht crew rights**

As for crew rights more broadly in the yachting sector, beyond the pandemic, Peak comments: “I think the thing about yacht crew when it comes to employment rights is they’re under the misconception – and they have been since I entered the industry, twenty-odd years ago – that they’re in some sort of legal grey area and they don’t have any rights – which of course, is completely untrue. The Maritime Labour Convention (MLC) was almost 10 years ago now – and as well as adding to the rights of employed crew it also highlighted, I think, throughout the industry, that crew members do have employment rights, and they do

have a system of recourse, should the employer treat them badly in whatever form. This is something that I'm interested in exploring in my practice, representing crew members, or employers. Institutions such as the Professional Yachting Association (PYA), and Nautilus International, have done a lot to highlight crew rights – and when the MLC came in, that seemed to heighten awareness throughout the industry. But I think there is still a lot of infringement of rights simply because of ignorance of them, on both sides. It's a high-end industry as well. The standards are very high. It's like having the Savoy Hotel floating around. It's intended to be ultra-luxury, and that means really attentive service to the guests, whatever they want, with the resulting level of pressure to deliver on the crew and management, which often can lead to infringement of working conditions with associated health and safety implications.”

### **Yacht charters and litigation**

On the issue of whether disputes with charter guests ever lead to litigation, Peak replies: “A breach of a charter contract is, I think, a very common one. Terminating a charter contract early, is fairly common – for whatever reason. This could be resulting from such things as the charter guests causing problems on board, causing damage, or having raucous parties, and the Captain actually terminates the charter. This isn't hasn't ever happened to me, but this is something I've heard about in the industry, and is quite common. For example there are several notorious celebrities who have on occasion completely trashed yachts, so in this type of incidence the Captain can legitimately, under the terms of the charter contract, terminate the charter. That's an obvious example of when the Captain would be allowed to do that. But then there are other more grey areas where the Captain might terminate the contract and the charter party doesn't agree there was legitimate reason to do so – or says whatever the grounds were was not their fault – for example, causing damage, or allowing drugs aboard. Also, if the charter experience doesn't conform to the charter's expectations (for any one of a multitude of reasons), then there could be grounds for litigation, as under consumer contracts.”

### **Superyachts and cybersecurity**

Another area of potential future legal relevance Peak raises is cybersecurity aboard: “People are becoming more and more aware that cybersecurity is a significant risk to the owner and to the operation of the vessel. In terms of how it could affect a superyacht, it's actually quite a complicated answer. It could be just a matter of someone hacking into the ship's servers and stealing all the data, which could include ship's records, crew data, photographs of the owner, all that type of stuff. Or it could be a more sophisticated attack which could potentially actually involve them completely taking over command of the vessel, logging into the operational IT system on board, and being able to control everything. Most modern yachts are all networked throughout. The engines, and all of the control systems are all electronics – and are usually controlled via an IT network, but they're not always a physically separate network which connects to the internet from the rest of the yacht. If there was a really sophisticated hack (and I don't know whether this is possible or not), but that would be the worst-case scenario – if someone could come in and completely take control of all of the systems on board the yacht. You can also alter the GPS positioning – and that's without hacking into the systems. That's hacking into the signal of the GPS system to the yacht so that the yacht thinks it's somewhere where it isn't – and that alone could potentially mean it ends up on the rocks, if the crew where not paying close attention.”

Peak notes that this seems to be an area where both legal and security professionals' awareness is increasing: “I went to the Monaco Yacht Show recently, and there was quite a lot of talk of cybersecurity. It's a very hot topic as the more modern superyachts are very technologically sophisticated and dependant. There is a lot of scope for interference from hostile actors.”

### **Crew background checks and superyacht security**

On the legal issues surrounding potential crew vetting for security reasons, Peak adds: “I've been pondering the problem of crew vetting for a long time. Something the MLC brought in is a requirement for crew agencies to be accredited, and part of that is doing reference checks, etc. But it doesn't mandate criminal background checks in any jurisdiction – and I

*Captain Matthew Peak, Shipping, Yacht and Commercial Barrister with Clerksroom, was interviewed by Chaynee Hodgetts, our Features & Opinion Editor and Mature Pupil Barrister with Nexus Chambers: [clerksroom.com](https://www.clerksroom.com)*



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