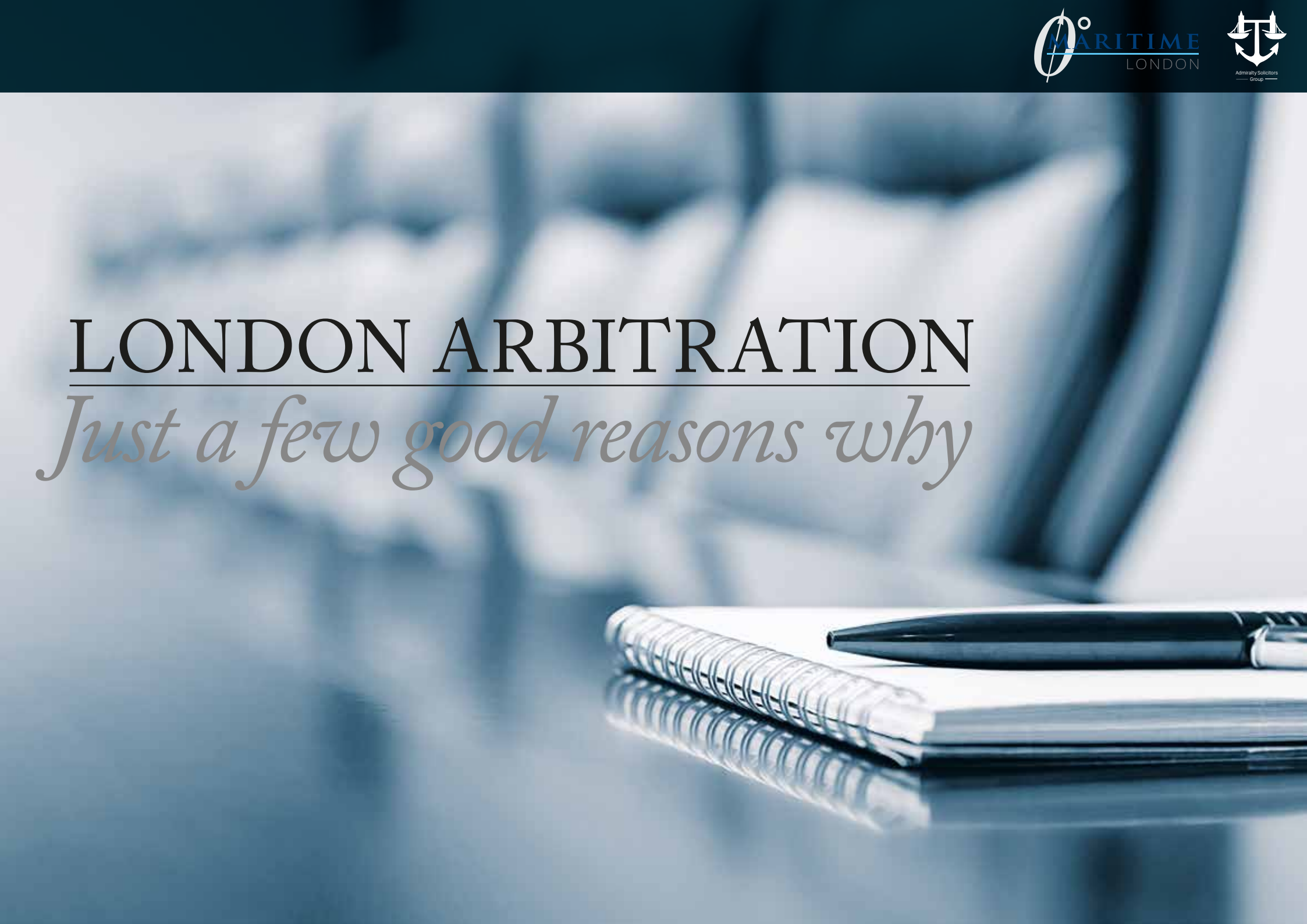

LONDON ARBITRATION

Just a few good reasons why

JUST A FEW GOOD REASONS TO USE LONDON ARBITRATION

1. *Familiarity within the international maritime community*
2. *Certainty and commerciality*
3. *Confidentiality*
4. *Enforcement of awards*
5. *Court and legislative support (The Arbitration Acts)*
6. *Limited right of appeal - the right balance*
7. *Quality and experience of arbitrators*
8. *Quality and experience of Commercial Court judges*
9. *The UK's Maritime Cluster - local availability of arbitrators, counsel and experts*
10. *Impartiality*
11. *Cost*
12. *Speed*
13. *The LMAA*

JUST A FEW GOOD REASONS TO USE LONDON ARBITRATION

London arbitration and the resolution of international commercial and maritime disputes

London arbitration with English law as the governing law and an English jurisdiction clause offers the best means of resolution of international commercial and maritime disputes for the following reasons:

1. Familiarity within the international maritime community

English law is the most widely used "foreign" law selected in international commercial and particularly maritime contracts. English arbitrators, lawyers and judges are the most experienced and best qualified to make correct decisions on its application. It is also the law most widely applied to standard form Charterparties and other maritime and trade contracts. English common law is a living system of law. It adapts as the commercial world changes its practice of doing business. English common law sees itself as the servant of the people and not the other way around. This attitude also makes it easier for commercial people to understand English law and to follow its logic. Precedent and business usage/intention can be referred to by all parties and be clearly understood. The legal systems of most Commonwealth countries are derived from English common law, but it is important to note they are not the same as English common law and can have some significant differences.

2. Certainty and commerciality

Commercial parties expect to have a clear understanding of their rights and the strength of their cases on the law when pursuing a dispute in arbitration. Predictability of outcome is important. English law has the widest and most detailed system of established case law in the international commercial, and specifically maritime, fields. This is publicly available through law reports and commentaries. English law is also attractive to commercial parties because it is based on the principle of freedom of contract. Arbitrators and the courts will seek to adopt the most commercial approach to give effect to the parties' intentions.

3. Confidentiality

Confidentiality is fundamental to London arbitration. Except in the case of an appeal to the Court the details of disputes are not made public. Guidance for future cases is however provided in summaries published in *Lloyds Maritime Law Newsletter* and the LMAA Newsletter. These summaries do not contain any reference to the parties or commercially sensitive information and may be published only if the parties do not object.

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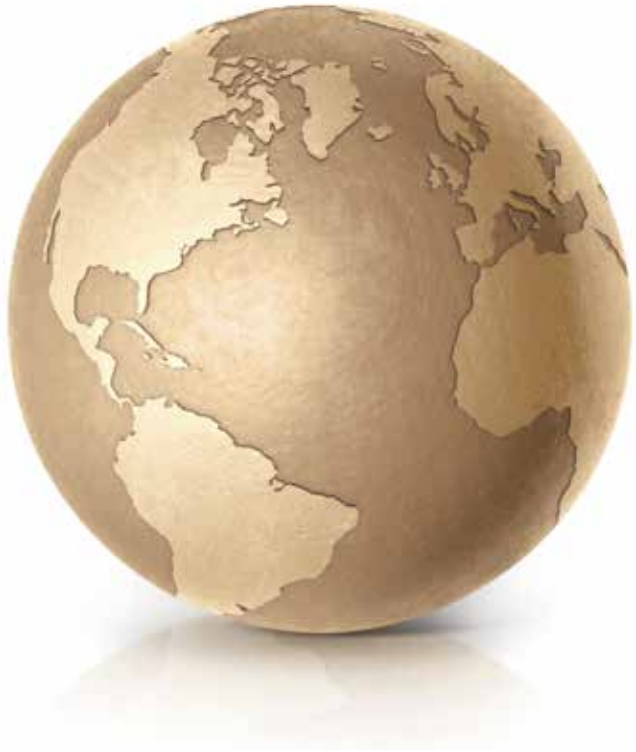


JUST A FEW GOOD REASONS TO USE LONDON ARBITRATION

4. Enforcement of awards

London arbitration awards are enforceable in nearly 160 countries which are parties to the New York Convention. These include all the major trading nations.

5. Court and legislative support (The Arbitration Acts)

The English Courts, which have specialised divisions with specialist Judges dealing with commercial and Admiralty matters, provide procedural support for London arbitration by making orders, where necessary, for the preservation of evidence and of assets to facilitate enforcement of future or existing awards.

6. Limited right of appeal - the right balance

The right of appeal to the English Courts from an English arbitral award provides a safety valve for a party to challenge a decision but on only two grounds: firstly, on a point of law of general importance or secondly for "serious irregularity". The parties' interest in achieving finality and limiting costs is however served in that the English Courts do not lightly accept challenges to arbitrators' decisions, particularly where appeals against decisions of fact are dressed up as "serious irregularity" claims. Indeed in 2015, BAILLI established that in the last 3 years to 2015 there were 56 applications to overturn awards of which 24 were given permission to appeal but in less than 1% of cases was the award actually overturned. Most other competing venues do not offer any right of appeal on points of law.

7. Quality and experience of arbitrators

The legal, commercial and technical experience of London arbitrators in maritime matters is substantial. Leading LMAA arbitrators all have significant maritime industry experience, have published numerous awards and have attended many hearings involving the consideration and presentation of evidence from technical and commercial experts. They are therefore very experienced in assimilating and assessing evidence and information while at the same time being confident enough to avoid parties unnecessarily complicating matters for tactical reasons.

8. Quality and experience of Commercial Court judges

The experience of judges of the Commercial Court who hear the small number of appeals from arbitration awards is also unrivalled internationally. Most of the Commercial and Admiralty Court judges have practised maritime law and are therefore alive to the issues, arguments and tactics of litigants. They can therefore not only understand the issues and deliver decisions consistent with the law but also make sense of complicated expert evidence.

London arbitration awards are enforceable in more than 160 countries which are parties to the New York Convention.

JUST A FEW GOOD REASONS TO USE LONDON ARBITRATION

9. The UK's Maritime Cluster - local availability of arbitrators, counsel and experts

The fact that there is a large body of potential arbitrators, lawyers and technical experts available in London inevitably reduces the costs of having to fly in expertise to the arbitration venue (although in exceptional circumstances London arbitration hearings may be held outside London). Witnesses who may not need to be present in person can be accommodated by video-conference facilities in appropriate cases, avoiding travel costs and visa issues. Indeed the UK has perhaps the most recognised centre of excellence for supporting services including the Bar and Maritime Solicitors. Maritime London and the Admiralty Solicitors Group are drivers on standard and innovation. The UK maritime cluster also ensures that the majority of cases settle rather than litigate or proceed to a full arbitration hearing.

Looking wider than maritime arbitration *TheCityUK UK Legal Services* 2016 report shows some other significant facts. Chapter 5 demonstrates that London and the UK are well positioned internationally in the conduct of commercial arbitrations and alternative dispute resolution. It is the preferred seat of arbitration, favoured by 47% of respondents in the 2015 International Arbitration Survey undertaken by Queen Mary University of London, the next most popular being Paris with 38%. Companies are also twice as likely to choose English law over other governing laws for arbitrations. English law was chosen by 40% of companies and New York state law by 17%.

"*The UK's Global Maritime Professional Services: Contributions and Trends*" report produced by the City of London and launched in April 2016 emphasises the value added to the UK economy by maritime services of which arbitration, and the legal expertise supporting that within the UK, play a major role.

10. Impartiality

London arbitrators have an unrivalled reputation for impartiality. In maritime cases legal challenges on grounds of bias are almost unknown. Arbitrators do not favour any particular category of litigant (e.g. owners, charterers, shippers etc.) or litigants from a particular country or region.

11. Cost

80% of London maritime arbitrations are handled on documents only, thus reducing cost. Decisions on preliminary issues may also be used to shorten proceedings. A recent survey by Queen Mary Centre for Commercial Law Studies concluded that, taking international commercial arbitrations as a whole, London arbitration was 18% less expensive than the nearest European alternative and London costs are at least competitive with other venues used in maritime arbitration, with many initiatives/options open to parties to agree procedures to minimise costs (including the LMAA's Small Claims Procedure (SCP) and Intermediate Claims Procedure (ICP); Lloyds Fixed Cost Arbitration (FCAP); or the shorter and flexible trial schemes in the English Courts). Again, it is worth highlighting that the majority of cases settle before final hearing.

London arbitrators have an unrivalled reputation for impartiality. In maritime cases legal challenges on grounds of bias are almost unknown.

JUST A FEW GOOD REASONS TO USE LONDON ARBITRATION

12. Speed

Availability of arbitrators within easy reach of London facilitates urgent hearings where an immediate decision is required. Arbitrators can, and do, hand down urgent interim awards dealing with immediate practical and legal issues. Every reasonable effort is made to have awards published promptly (and wherever possible within 6 weeks) after the end of submissions or hearing.

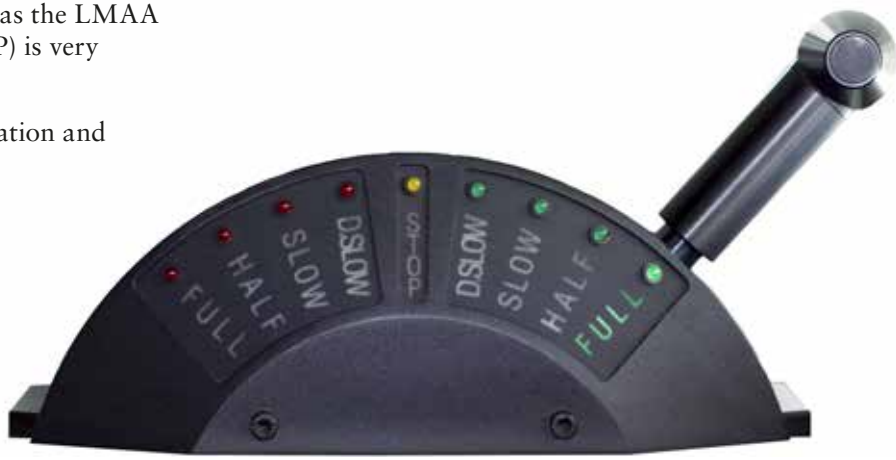
Availability of arbitrators within easy reach of London facilitates urgent hearings where an immediate decision is required.

13. The LMAA/Arbitration options

The London Maritime Arbitrators Association is an internationally recognized and respected body. Its Terms and Procedures, drafted on many years' experience to best suit the commercial demands of the global shipping community, are the most widely adopted for the conduct of international maritime arbitrations. The LMAA monitors the qualifications of those who wish to embark on the process to becoming full members.

The great majority of London maritime arbitrations are conducted by arbitrators who are full or supporting members of the LMAA and on LMAA Terms. The LMAA is not an arbitration centre and does not levy fees on participants who wish to arbitrate in London. Currently London is the venue of choice for the vast majority of international maritime arbitrations. In the 5 years from 2011 to 2015 for the LMAA alone, it is estimated that approximately 17,650 appointments were made and in that same period, 3,000 awards were published by London maritime arbitrators. This however is undoubtedly a considerable underestimate since it only captures those in which full members of the LMAA participated as members of the tribunal and does not include those conducted by members of the Bar and others or LOF arbitrations. This figure is considerably more than reported by any other maritime arbitration venue (or indeed of all the other international venues combined). As well as the LMAA terms, LMAA arbitration using the LMAA Small and Intermediate Claims Procedures (SCP and ICP) is very popular, as is Lloyds with FCAP under the Lloyds Open Form Arbitration Procedure.

Lloyds have the LOF arbitration procedure and bodies, such as the ASG, can offer options on arbitration and mediation providers on a cost effective and efficient basis.



THE ADMIRALTY SOLICITORS GROUP

The Admiralty Solicitors Group

The Admiralty Solicitors Group (ASG) was formed in 1972 to promote and preserve standards in the practice of maritime law in England. ASG member firms all have established reputations in maritime law and are committed to the continued development of England, and particularly London, as a maritime legal centre. Although the group was established principally with Admiralty Law matters in mind ('wet' cases: collisions and salvage etc.) its interests now embrace 'dry' matters: carriage of goods, sale and purchase, insurance and all other aspects of shipping law in which member firms play a prominent part.

Many if not most firms have among their practitioners Master Mariners or other ex-seafarers also qualified as lawyers. This industry 'inside knowledge' gives case-handlers a unique and thoroughly practical insight into the issues to be resolved in cases, resulting in a cost-efficient approach.

The Group meets regularly to discuss current issues that affect the efficient practice of English maritime law. Over the years the ASG has developed and agreed standard wordings: for instance, guarantee and jurisdiction wordings which are regularly accepted internationally in the shipping and insurance industries, thus saving time and money by avoiding unnecessary drafting and negotiation. The Group is represented on committees and working parties including the Commercial Court Users Committee and the Lloyd's Salvage Group and is consulted by other organizations on shipping issues and the development of maritime law.

The ASG offers a panel of experienced practitioners to act as arbitrators in small collision and salvage cases and a panel of solicitor mediators, through the closely related Maritime Solicitors Mediation Services.

www.admiraltysolicitorsgroup.com

Admiralty Solicitors
Group

Maritime London

Maritime London – the promotional body for UK-based companies providing professional services to the international shipping industry. Funded by over 100 companies and organisations from a wide range of disciplines, Maritime London ensures that the UK remains a world-beating location to base a maritime related business and to conduct maritime trade. Membership of Maritime London is open to any company that is able to demonstrate support for the UK's maritime services sector on a global basis.

Maritime London's mission is to promote the UK as the world's premier maritime business centre and its objectives in support of the mission are:

- To represent collectively and raise the profile of maritime professional business services
- To facilitate new business for members through trade promotion
- To attract shipowners, operators and cargo interests to the UK
- To build upon historic and present-day advantages of the UK as the pre-eminent base for international maritime professional business services
- To assure a professional maritime skills base through the encouragement, recruitment and retention of British seafarers
- To promote British maritime training and education
- To encourage networking between its members in order to build closer contacts
- To organise industry events aimed at bringing members up-to-date on recent developments in the maritime industry

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