

Redelivery

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Redelivery under a time charter party is a critical time for both shipowners and charterers, who come under important obligations at this time.

Given those obligations, disputes can and do frequently arise. It is not possible to consider all issues which might arise, and the answer to any particular dispute is likely to be contract- and fact-dependent, on which further advice should be obtained.

This guide deals with redelivery and Guide 5 with delivery. Both guides provide an overview of some of the topics which usually cause disputes.

To keep matters simple, we will consider the industry standard NYPE 1946 form and assume that the charter party is for a period rather than a trip. In practice, the standard form is often substantially amended with additional terms agreed in a fixture recap and/or rider clauses, but working from the standard form provides a useful starting point.

¹ See the general commentary from paragraph 4.11 of *Time Charters* (8th Ed.).

Similar considerations will arise in respect of a time charter trip, but given their nature, the obligations may also differ.

The period of a charter party can be agreed for either a fixed or variable duration. Most commonly, it is for a variable period, but the precise term will define the flexibility afforded to charterers.¹ For example:

a. *“a period of 12 months, 15 days more or less”*

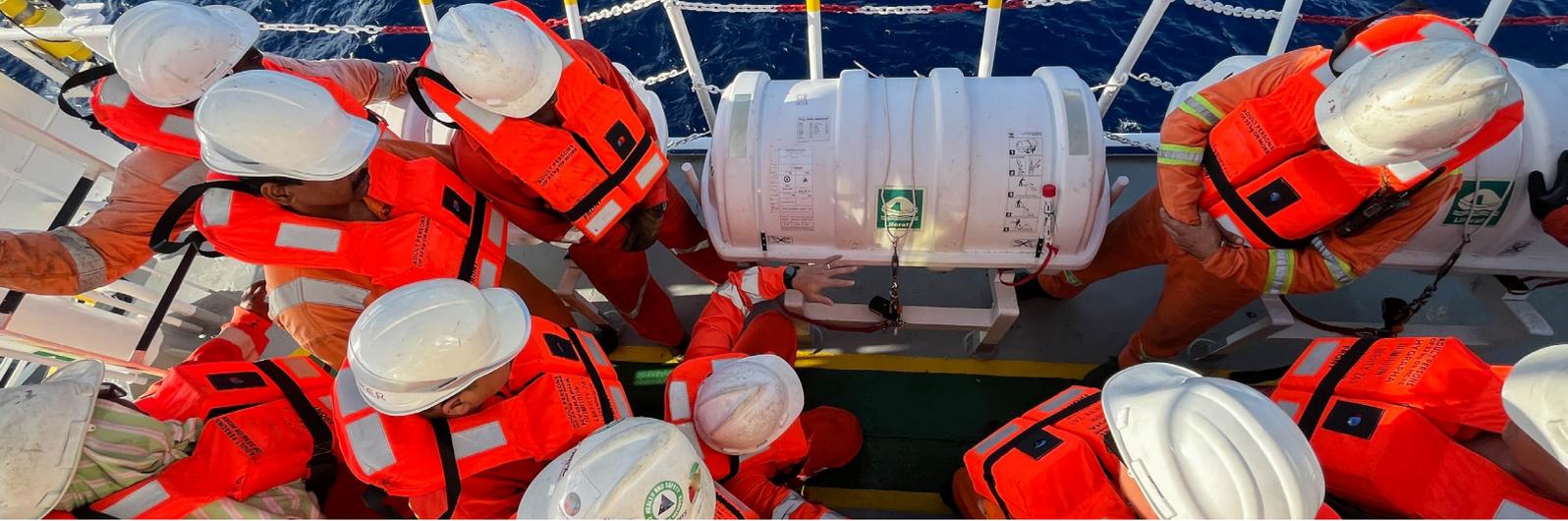
The period is defined but provides a tolerance within which redelivery must take place.

b. *“a period of minimum 10 months up to maximum 12 months in charterers’ option”*

There is no additional margin imposed. The vessel must be redelivered within the defined two-month period.

c. *“a period of about 4 to about 6 months”*

The period is defined but is considered to be approximate because “about” provides a margin around the agreed period.



The exact margin to be imposed depends on the terms agreed. For example, in *The Democritos*,² a margin of five days was allowed where the charter party was for about four to six months, but in other cases, longer (or shorter) margins have been imposed.

Early or late redelivery

Charterers are obliged to redeliver the vessel within the agreed period, but what is the position if they redeliver before or after that agreed period?

Early redelivery

If charterers attempt to redeliver the vessel before they are permitted to do so, they are in repudiatory breach. Owners then generally have a choice either to:

- a. accept early redelivery and claim damages; or
- b. reject early redelivery and continue to claim hire.³

If owners accept early redelivery, the usual measure of damages is the difference between the charter-party rate and the substitute or market rate:

- a. In normal circumstances, where there is an available market,⁴ damages are calculated as the difference between:
 - i. what owners would have earned under the charter party,⁵ having regard to all available evidence as to what would have happened⁶ had charterers redelivered according to the charter party, and provided owners can evidence that they would have performed their side of the bargain⁷; and

² [1976] 2 Lloyd's Rep. 149.

³ See, for example, *The Aquafaith* [2012] 2 Lloyd's Rep. 61.

⁴ An available market means a market (i.e., a willing buyer and seller or owner and charterer) for a substitute charter of the length of the unexpired term of the broken charter party; see, for example, *The Kildare* [2011] 2 Lloyd's Rep. 360 and the first instance decision in *Spar Shipping v Grand China Logistics* [2015] 2 Lloyd's Rep. 407.

⁵ Depending on the duration of the charter party and the time of the assessment of damages, credit might be given for what is called "accelerated receipt", i.e., receiving the monies in advance of when owners otherwise would have done had the charter party been performed. See, for example, *The Kildare* [2011] 2 Lloyd's Rep. 360.

⁶ See *The Golden Victory* [2007] 2 Lloyd's Rep. 164.

⁷ See *The Glory Wealth* [2013] 2 Lloyd's Rep. 653.

⁸ See *The New Flamenco* [2017] 2 Lloyd's Rep. 177.

⁹ See *The Aquafaith* [2012] 2 Lloyd's Rep. 61. This means that the owners must retain a legitimate interest in continuing to perform the charter party; that performance can be continued without the co-operation of the charterers; and, if the charterers can show that damages are an adequate remedy for the breach, the owners' insistence on maintaining the charter party may be held to be "wholly unreasonable or perverse", and the owners are entitled to claim damages rather than hire.

- ii. if owners refix the vessel on similar terms (the substitute-fixture rate), or if they do not refix on similar terms or choose to fix or employ the vessel in a different way, the market rate for the unexpired portion of the charter party.

- b. In unusual circumstances, such as those following the financial crash of 2008, there may be no available market for the vessel. In that case, owners are to be put back into the financial position that they would have been in had the contract been performed, taking into account what they have actually done with the vessel. This is often a complex analysis and has spawned a number of significant cases, including the question of whether a benefit or windfall obtained following early redelivery should be considered when calculating damages.⁸ For such a benefit to be relevant, there must be a causal link between the benefit obtained and the breach of the charter party.

In *The New Flamenco*, there was no such causal link between early redelivery and the sale of the vessel at an earlier time, resulting in the owners obtaining a higher sales price compared to the price following the proper redelivery date, because the owners could have sold the vessel at any time during the charter party.

If owners reject early redelivery, they may continue to claim hire from charterers for the remaining period of the charter party, provided owners' conduct is "not beyond all reason"⁹ and provided owners keep the vessel at charterers' disposal until the proper time of redelivery.

Last voyage orders & late redelivery

Charterers are under a duty to redeliver the vessel at the end of the charter period. To do that, charterers must ensure that the vessel's last voyage of the charter enables them to redeliver the vessel by the end of the agreed period, however expressed and, where appropriate, factoring in any tolerance for that period.¹⁰

With respect to last voyage orders:

- a. If charterers order the vessel to perform a last voyage which cannot be reasonably expected to be performed within the charter period, that is an illegitimate order, and owners do not have to perform it.
- b. Charterers have a continuing obligation to amend their orders if circumstances change and valid orders become illegitimate.
- c. Charterers' last voyage orders must be legitimate both at the time that they are given and when they must be performed.
- d. Owners may accept the order and perform it, in which case hire continues to accrue until redelivery and owners are entitled to damages, or reject the order, in which case charterers must give alternative orders.

Disputes concerning last voyage orders are often time-critical, and Members are therefore encouraged to seek advice at the earliest opportunity.

If the vessel is redelivered late, the normal measure of damages is the difference between the charter-party hire earned and the market rate for the vessel that owners would have earned during the period of the overrun only.¹¹

There is some debate about how to properly assess the market rate for the period of the overrun, but following the majority of the Court of Appeal in *The Johnny*,¹² the appropriate market rate is thought to be for a period time charter of a similar duration, to compare like with like, as opposed to what would have been obtainable for the particular trip or voyage. In that case, the vessel was fixed on the *Baltim* form and the Court of Appeal considered this as a matter of construction. As a result, the proper measure likely requires further consideration by the courts.

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Where a vessel is redelivered late, it may be that owners lose their next fixture. Often it is asked whether those losses are recoverable. The answer generally is no – damages remain the difference between the charter-party and the market rate for the period of the overrun. The reason for this is that in *The Achilles*,¹³ it was decided that in the absence of special knowledge, a party is only entitled to recover “those losses which will generally happen in the ordinary course if the breach occurs”, i.e., those losses which are in the reasonable contemplation of the parties as not unlikely to result from the breach. In *The Achilles*, it was considered that the parties would not have thought that the charterers were assuming responsibility for the particular type of loss, i.e., the loss of a follow-on fixture, because they did not have control over or knowledge of the fixture itself or its terms.¹⁴

There is also legal debate concerning the extent to which an owner's arrangements following redelivery are to be considered or whether owners remain entitled to the ordinary measure of damages. This issue

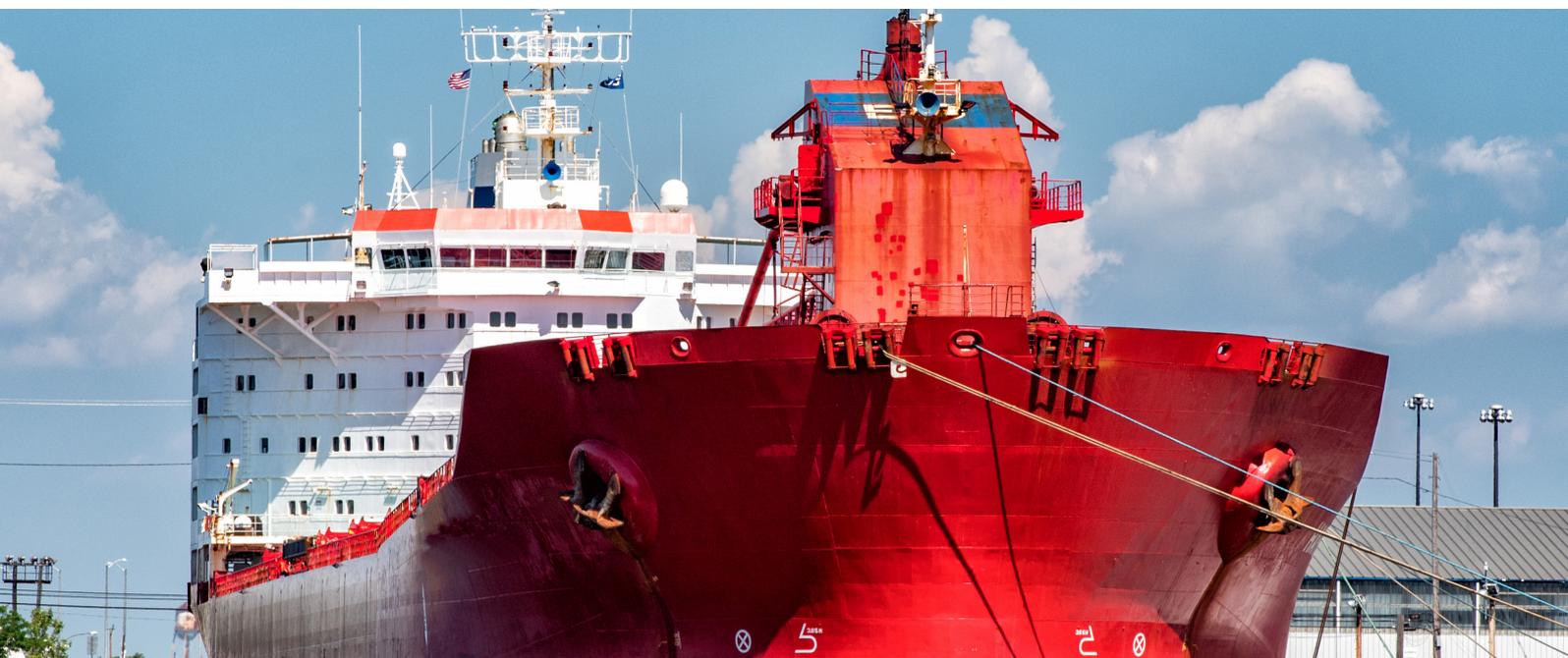
¹⁰ See, for example, *The Peonia* [1991] 1 Lloyd's Rep. 100 and *The Gregos* [1995] 1 Lloyd's Rep. 1.

¹¹ See paragraphs 4.66–4.67 of *Time Charters* (8th Ed.).

¹² [1977] 2 Lloyd's Rep. 1.

¹³ [2008] 2 Lloyd's Rep. 275.

¹⁴ Subsequent decision, for example, *The Syliva* [2010] EWHC 542 (Comm).



has been recently considered in both the High Court and the Court of Appeal.¹⁵ Permission to appeal to the Supreme Court has been granted, and so there will be a final word on this matter.

Overall, this is a complex area, and each case needs to be considered on the terms agreed and the requisite knowledge of the parties, both at the time of entering the charter party and, potentially, at the time that the last voyage orders are given, if they are found to be illegitimate.

To avoid dispute as to the proper measure of damages, it is becoming increasingly common for the parties to agree an express formula in the event of late redelivery.¹⁶

Once the period is defined, the NYPE form imposes three obligations on charterers regarding redelivery at the end of the charter period:

- a. the vessel is to be redelivered at the agreed location;
- b. with the required notice; and
- c. in the same good order and condition as on delivery.

Location

It is not a condition precedent to redelivery that the vessel be at the agreed place,¹⁷ and owners cannot reject redelivery if redelivery is tendered at an incorrect location. However, it is a breach of charter for which owners may recover their loss in the ordinary way.

Where there is a failure to tender redelivery notices, or sufficient redelivery notices, damages are intended to place owners in the same position as they would have been without the breach.

Generally, owners will be entitled to recover the difference between:

- a. the profit that they would have made under the charter party had the last voyage been made to a permitted place of redelivery; and
- b. the profit that owners did earn or could have reasonably earned in the period that the voyage would have taken.¹⁸

Notice

The notice requirement in the NYPE form would often be amended to provide for approximate and then definite redelivery notices. For example: *"Charterers are to give Owners 15/10/7/5 approximate days' notice of vessel's expected date of re-delivery and 3/2/1 days' definite notice."*

If charterers fail to give redelivery notices, it does not prevent them from redelivering the vessel.

If charterers fail to give notice or give less notice than that required, the breach probably only occurs on redelivery of the vessel¹⁹ and owners have no obligation to mitigate until the vessel has been redelivered²⁰.

For an owner, redelivery notices are important in fixing the subsequent employment of the vessel. However, the exact legal effect of a redelivery notice remains open for debate.

Where there is a failure to tender redelivery notices, or sufficient redelivery notices, damages are intended to place owners in the same position as they would have been without the breach.²¹

- a. A court or tribunal must decide whether either (i) the required notice could and should have been given the required number of days prior to the actual date of redelivery, or (ii) if notice could not have been given as required before the actual redelivery, whether redelivery should have taken place at a later date (i.e., after the date of actual redelivery) as if the required notices were given.

¹⁵ See *Skyros Maritime Corporation & Agios Minas Shipping Co v Hapag-Lloyd AG* [2025] EWCA Civ 1529.

¹⁶ See, for example, the BIMCO Redelivery Clause for Time Charter Parties 2017:

https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/redelivery-clause-for-time-charter-parties_2017.

¹⁷ See *The Greek Fighter* [2006] 1 Lloyd's Rep. Plus 99.

¹⁸ See *The Rijn* [1981] 2 Lloyd's Rep. 267. There is some discussion (see, for example, paragraph 15.11 and following) as to whether this is the proper measure of damages in circumstances where to order the vessel on a final voyage to the redelivery location would likely be an illegitimate last voyage order, which charterers are under a duty not to give. That question is yet to be answered by the courts.

¹⁹ See *The Niizuru* [1996] 2 Lloyd's Rep. 66. *The Niizuru* concerned a laycan provision, but it is generally accepted in the texts; see, for example, paragraphs 15.15-15.16 of *Time Charters* (8th Ed.).

²⁰ See *The Liepaya* [1999] 1 Lloyd's Rep. 649.

²¹ See the commentary from 12-295 of *Carver on Charterparties* (3rd Ed.).

- b. To do that, it must be determined whether charterers could have given the required redelivery notices honestly, in good faith and on reasonable grounds before the date on which the vessel was actually redelivered. The answer to that question impacts on the damages that owners will recover.
- c. If charterers could have given the required notices but failed to do so, owners are entitled to recover the net loss of earnings caused by the failure. In *The Liepaya*,²² the charterers gave only one day's notice instead of 15, and so owners were entitled to claim their loss of earnings. That might include an idle period awaiting further employment, in which case owners might be entitled to the hire which they would have earned had they been able to fix employment at an earlier date.
- d. If charterers would not have given notice because, for example, at the time the notice would have been due, they had no intention of redelivering the vessel, then redelivery is calculated to take place the required number of days from the earliest point at which charterers intended to redeliver the vessel. Owners can therefore claim (i) the net hire which would have been earned for the balance hire period after actual redelivery to calculated redelivery, and (ii) net earnings which could have been achieved by owners in that period.²³

Condition

The NYPE form provides for the vessel to be redelivered in like good order and condition, fair wear and tear excepted, as on delivery. As with the other points above, it is not (in the absence of an express provision) a condition precedent to charterers' right to redeliver that the vessel be put back into like good order and condition at the time of redelivery.

If, due to charterers' breach, the vessel is damaged on redelivery, charterers are liable for the cost of repairs and other losses arising.²⁴

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However, charterers' obligation must be read in the context of the charter party as a whole,²⁵ and it is obvious that charterers are not responsible for any defects in maintenance at the time of redelivery or likely insurable damage, unless such damage is a result of charterers' breach of other clauses of the charter party. Otherwise, such damage remains owners' responsibility, i.e., it is an obligation on charterers to redeliver in like good order and condition, so far as it is within their control.

However, there is a slightly contrasting view as to the obligation taken in *The Pamphilos*,²⁶ that charterers are to indemnify owners for the cost of restoring the vessel to its delivery condition, to the extent that damage has been caused by following charterers' orders, so long as the damage is not ordinary "wear and tear".

The Pamphilos concerned barnacle growth on the hull, which was found to be an ordinary consequence of trading the vessel (i.e., fair wear and tear) and therefore for owners' account. The effect of hull growth arising from long port stays and the costs of cleaning are now typically provided for expressly in the charter party either pre- or post-redelivery.

Bunkers

On redelivery, generally:

- a. The vessel is not required to take on bunkers which are clearly not required for the chartered service.²⁷
- b. If the price of the bunkers is not provided for in the charter party, the price will be the market price at the place of redelivery.²⁸
- c. If the charter party provides for a price on redelivery, that price will apply to the contractual redelivery quantity.
- d. Charterers are in breach if they redeliver the vessel with a shortage or an excess of bunkers on board, after making an allowance for "about", usually considered to be 5%.²⁹
- e. If charterers are in breach of the charter party, the normal position will be to account for the shortage or excess quantity at the market price at the place and time of redelivery.

²² [1999] 1 Lloyd's Rep. 649.

²³ See, for example, *The Great Creation* [2015] 1 Lloyd's Rep. 315.

²⁴ Further obligations as to the condition of the vessel and the obligation to repair often arise in the context of stevedore damage and hull fouling clauses.

²⁵ For further discussions, see Article 196 of *Scrutton on Charterparties and Bills of Lading* (25th Ed).

²⁶ [2002] 2 Lloyd's Rep. 681.

²⁷ See *The Captain Diamantis* [1977] 1 Lloyd's Rep 362 and on appeal [1978] 1 Lloyd's Rep. 346.

²⁸ See *The Good Helmsman* [1981] 1 Lloyd's Rep. 377.

²⁹ See London Arbitration 13/03, but it is open to a tribunal to find a different tolerance for "about"; see London Arbitration 15/13, where a tolerance of only 2% was allowed.



- f. However, this is not necessarily a straightforward issue. In London Arbitration 3/23:
- i. A vessel was redelivered with an excess of over 200 mt of IFO and 60 mt of MGO.
 - ii. When it came to assessing the value of the excess bunkers, owners claimed the difference between charter-party and Singapore invoice prices. Charterers said that the difference must be calculated between the charter-party price and those at Durban, the nearest bunkering port.
 - iii. The tribunal held that there was a breach so that owners were entitled to damages:

“Those damages should aim to put them in the position they would have been in had there been no breach. However, what that position would have been could only be the subject of speculation. The owners might have taken additional bunkers at Durban, depending on the vessel’s next employment. They might have ballasted the vessel to some distant port where bunkers might have been more or less expensive. They might have delivered the vessel into another time charter, with delivery bunker prices that would have been subject to negotiation and which might have been higher or lower than Durban prices. It was not possible to resolve this speculation.”

Attempting to find a principled approach which could apply to any situation where there was a failure by charterers in respect of the quantity of redelivery bunkers, it occurred to the tribunal that if the redelivery quantity required by a charter was relatively small and the excess equally modest, the owners would probably have to bunker at the nearest bunkering port. The same would be true if the charterers were to redeliver a ship with such a shortfall in redelivery bunkers that the owners would need to arrange an immediate stem. To apply the agreed charter price, or the purchase price of the charterers’ stem, would not do justice to the situation in such cases.”

Ultimately, the tribunal held that damages should be assessed by reference to the price at Durban, but it demonstrates that other considerations may apply, depending on the precise circumstances of the case.

To avoid disputes, parties often include express clauses specifying the price which applies in such a scenario.

This note is intended for general guidance only and should not be considered as legal advice. For specific advice, please contact The Swedish Club.