



Guidelines for Collecting Maritime Evidence

Volume 1

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This book has been prepared to address the subject of guidelines for collecting maritime evidence. This should not, however, be taken to mean that this document deals comprehensively with all of the concerns that will need to be addressed or even, where a particular matter is addressed, that this document sets out the only definitive view for all situations. The opinions expressed are those of the contributors only and are not necessarily to be taken as the policies or views of any organisation with which they have any connection.

Readers of *Guidelines for Collecting Maritime Evidence Volume 1* are advised to make themselves aware of any applicable local, national or international legislation or administrative requirements or advice which may affect decisions taken on board.

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Foreword



By Philip Wake OBE MSc FNI

Chief Executive, The Nautical Institute

There are many reasons why maritime evidence needs to be collected and many different recipients for that evidence. The process of compiling evidence begins with the regular record keeping on board ship and in the management office ashore, whether in compliance with the ISM Code or the many regulations and procedures in place. If this is being done well, the task of putting together the evidence required after an accident or incident is made considerably easier. Similarly, the increasing availability of electronic data capture and transmitting systems on board ship are making it easier to compile and analyse data. It is to be hoped that companies will make far greater use of these systems in order to reduce the administrative burden on their sea staff and to provide the necessary proof of compliance.

However, what evidence needs to be collected, why and for whom? This timely book, and its companion volume, *Guidelines for Collecting Maritime Evidence Volume 2*, set out to answer these questions in a concise but expert fashion. Written by experienced professionals in their fields and covering the range of interested parties involved in accident investigation, it is made accessible to all by the use of maritime English. It avoids lengthy chapters while still providing the essential information.

It is crucial that both volumes are made available to company fleets and shore staff so that all are fully aware of what will happen and what they will be required to produce as evidence should an accident or incident occur. Naturally, we all hope that we are not faced with a casualty situation but it is doubtful if there is a shipping professional anywhere who has gone through their entire service without being involved in some form of accident. When something does go wrong, it is not the time – and there is no time – to start reading about what you should collect in the way of evidence. That task must be undertaken when work is proceeding smoothly and as part of your normal professional development. This book should be required reading for all officers and not just held in the company's office for reference.

The authors of the chapters are to be commended for a job well done and John Noble has expertly pulled it all together as Technical Editor, using his immense experience in the maritime industry, including his leadership of the Salvage Association. It is to be hoped that this work will help to protect mariners from criminalisation after accidents because they will have recorded their actions accurately and thereby provided themselves with a good defence.

Dedication

This book is dedicated to the many seafarer organisations that step in to support mariners following an incident, often while the collection of evidence is under way.

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How to use this book

This book can be used in conjunction with checklists on The Nautical Institute website at www.nautinst.org/guidelines.

These give practical guidance to those on board a vessel involved in an accident or incident. They contain example lists of evidence that should be collected for the more common of these.

There are 22 evidence lists on the website:

- 1 General, for most incidents
- 2 Personal injury
- 3 Illness
- 4 Disciplinary
- 5 Industrial action
- 6 Stowaways
- 7 Distressed people
- 8 Diversion
- 9 General, for cargo incidents
- 10 Dry cargo
- 11 Liquid cargo
- 12 Containers
- 13 Pollution
- 14 Collision and damage
- 15 Grounding, stranding and sinking
- 16 Salvage and general average
- 17 Hull and machinery damage
- 18 Newbuilding warranty dispute
- 19 Port delay dispute
- 20 Performance disputes
- 21 Port and berth safety disputes
- 22 Bunker dispute

This book widens the scope of advice on evidence collection beyond the mariner and the Master to include those investigating the accident or incident for various reasons. Onshore evidence is also covered. The demands for evidence made by those who come on board after an accident or incident are explained, as are the demands of those who may ask for evidence from afar, possibly long after the event.

image: Danny Cornelissen (www.portpictures.nl)



Chapter 1

Introduction

By John Noble, Technical Editor, *Guidelines for Collecting Maritime Evidence*

Readers of this publication will be familiar with the development of The Nautical Institute's series of books on collecting evidence, all of which have been accepted by the maritime industry as standard reference works. Dr Phil Anderson FNI led the team that produced the first book in 1989 entitled *The Master's Role in Collecting Evidence*; this was followed in 1997 by an updated book of broader scope indicated by its title *The Mariner's Role in Collecting Evidence*. This was further updated in 2006 when Dr Anderson produced the book entitled *The Mariner's Role in Collecting Evidence – in light of ISM*. In 2010, the then North of England P&I Association (now North P & I Club) and the North East England branch of The Nautical Institute combined to publish a handbook to accompany this entitled *The Mariner's Role in Collecting Evidence – Handbook*.

All these publications dealt with the issues involved in collecting evidence after an incident on board or close to a ship, with the focus on those individuals sailing on the ship or having direct dealings with it. When such an incident occurs, however, evidence collection is not so restricted. Many different interests will want, or need, to get involved in collecting and using evidence for their own purposes and this new publication aims to reflect that. Owners, managers and mariners need to know what evidence these individuals and organisations will want and why, and how this affects their own day-to-day operation and record keeping. Those individuals and organisations when making demands on the Master, crew and shoreside offices need to be aware of others doing the same thing.

The key question for the Technical Editor was, "What is evidence?" The question may be simple enough, but the answers are many, to say the least. Some investigators or enforcers see evidence as a word only to be associated with criminal activity, while others see it in a broader light where civil action may be contemplated. Resolution of criminal matters depends on the conclusions from evidence submitted being judged to be "beyond reasonable doubt", whereas in commercial matters the burden of proof is required at the "on the balance of probabilities" level.

Clearly, the answer to this question will depend upon the mind-set of the person seeking the evidence. After an accident, a P&I Club will probably be looking for evidence that can limit its liability; a marine regulator will be looking for evidence that rules or regulations have been broken; a flag state safety investigator will be looking for evidence leading to safety lessons that can help prevent a recurrence.

Whoever is asking for evidence, their requirement that it covers 'who', 'when' and 'what' will be similar, as most will want to know the facts of the case. Not everyone is so interested in 'how' or

'why' an accident occurred, or what can be done to stop it happening again. Punishment can be a deterrent, but it is not always appropriate to punish individuals for failings in the system. The same piece of evidence can point both to an individual's culpability for an accident and to systemic failings that need addressing. Consequently, evidence will not always be shared among investigating bodies. This can lead to an unseemly race to grab evidence before other investigators arrive on scene. It can also lead to blocking tactics or obfuscation by those who perceive that cooperation is not in their, or their client's, best interests.

So how should the Master react after an incident when several investigating bodies are knocking on the door, all with differing requirements and priorities? Just as importantly, how can the Master, crew and management ashore be ready to produce the evidence required, much of which demonstrates day-to-day operations and compliance with the ISM Code and applicable statutes. This publication seeks to provide broad answers to those questions.

The Table of Contents demonstrates the wide range of interests that may be involved in the collection of post-incident evidence. In inviting contributions to the book, I tried, as Technical Editor, to obtain input from as many of these as possible and I'm grateful to the individuals who were willing to share their own experiences. Readers may not agree with all that has been written, and if discussion results, so much the better.

It is perhaps not surprising that there is some duplication between chapters. This serves to illustrate what is common to all evidence collection. Following an incident, however, the facts of the case will determine what specific information will be required – as will the role of the person collecting evidence.

Some chapters look briefly at the collection of electronically acquired evidence, in a general sense. There are some 27 different ECDIS systems in use on board ships. The IMO has several regulations that apply to ship-borne VDR systems and there are nearly 20 VDR systems available that comply with regulations. Generally, at present, data must be withdrawn from units by specialists, usually from the manufacturers. In addition, there are any number of publications offering guidance to practitioners who become involved in the downloading and use of electronically generated evidence.

Many ship management companies have systems where VDR information is stored remotely. Following an incident, this may need to be recovered, again by specialists. The question of who has access to this electronically generated evidence will no doubt exercise the minds of the lawyers involved. Statutory investigators will also need to rely on expert assistance to obtain the information required. Perhaps surprisingly, AIS information is more readily available, sometimes at a cost.

It is important that users of this publication are aware of the issues arising from the collection and use of electronically obtained evidence. Solutions to these issues are yet in their infancy and are included in a separate Nautical Institute publication *Guidelines for Collecting Maritime Evidence Vol 2*. Certainly, as the concept of the autonomous ship becomes a reality, systems will be required to ensure accurate and reliable data is recovered and stored.

As part of the background work for this publication, help and input has been received from an expert in the field, Jennefer Tobin. She has set out here some thoughts and an outline guidance on this vital part of evidence collection.

Recording and using digital data

Systems are being developed that provide tools to a ship's crew to replace paper with digital data, captured once, at the place of work on board. For investigators, this means that electronic data will be available ashore so that a digital data set can be tailor-made to suit their needs. One example is the completion of electronic engine room logs. These give real time data to analyse and evidence of actions taken on board, such as ISM Code compliance. The system is organised to give serving mariners defined tasks so they can deliver on the ISM Code rules, as customised to their ship's requirements. These tasks are initiated at the place on the ship where the job should be performed, through a hand-held device with clear instructions on the actions to be performed. Finger entry enables the capture of digital records direct to the relevant computer system – once only capture.

This technology will have an impact on the insurance and legal sectors as it provides real time information for post-incident analysis. It will record crew performance and the effect on evidence for insurance purposes, for example, might be transformational on several fronts:

- The last dated relevant actions will provide the starting point for investigation into the causes of an incident
- Historical evidence of compliance in carrying out duties will provide context to understand how the ship was run before the incident
- This data will provide evidence that is currently unavailable
- It is easy to create additional task lists to the specification of stakeholders
- It can replace paper recording and achieve better evidence – who completed the task, when and where.

While the insurance sector is one of several that will benefit from this technology, the greatest benefit might be for serving mariners who carry the burden of responsibility and accountability.

Once the collection of electronic evidence becomes easier, there will be many issues to deal with and it may ultimately lie with the IMO to draw up some acceptable guidelines when retrieving electronic evidence from a casualty after an incident.

It is plain that in the future electronically sourced material will play an even more important part in the evidence collection portfolio. Provided the right safeguards are in place, post-incident manipulation should be impossible.

None the less, we should not lose sight of the present. The following chapters, compiled by true experts in their field, offer guidance on the breadth and depth of evidence collection.