



Guidelines for Collecting Maritime Evidence

Volume 2

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Foreword



By Lord Clarke of Stone cum Ebony

Former Master of the Rolls and
Head of Civil Justice in England and Wales

John Noble recently asked me to write a short foreword to the second volume of the *Guidelines for Collecting Maritime Evidence* series – called GCME in shorthand.

There is a long history to this second volume of The Nautical Institute's practical offerings to help those who find a need to collect evidence. First in the Collecting Evidence series was the book entitled *The Master's Role in Collecting Evidence*, published by The Nautical Institute in 1989. A replacement volume was published in 1997 called *The Mariner's Role in Collecting Evidence* expanding the scope of evidence collection beyond the Master's involvement. The next edition, published in 2006, developed into *The Mariner's Role in Collecting Evidence in the Light of ISM*. This was augmented in 2010 by *The Mariner's Role in Collective Evidence – Handbook*, published in co-operation with the North of England P&I Club. The evidence checklists from the *Handbook* are now available on The Nautical Institute's website at www.nautinst.org/guidelines.

As John pointed out in his preface to Volume 1 of *Guidelines for Collecting Maritime Evidence*, launched at The Nautical Institute's 2017 AGM, he has followed all this hard work with GCME Volume 2. In his own introduction to this edition, he has described Volume 2 with clarity as very varied indeed.

I only wish that when I was at the Admiralty Bar involved in disputes with my old sparring partner (now room-mate) Sir David Steel, later QC, I could have had all the learning and expertise that John Noble displays in his various analyses of a Master's skill.

I have to say that it was not until I read Mr Justice Teare's account of the values of a VDR, as described in Chapter 13, that I appreciated how much things have changed since then.

It is hard for all to keep up with these changes and both *GCME* volumes will help those dealing with incidents to understand what evidence is needed and why.

Dedication

This volume is dedicated to all the emergency services and volunteers who often put their own lives at risk when attending ship casualties to render lifesaving duties at sea and in harbours.

Acknowledgements

Many people have helped to contribute to this book. It was inspired by peer reviewers and contributors to the first book in the series, which has now become Volume 1 of *Guidelines for Collecting Maritime Evidence*. Our contributors and many peer reviewers are listed in the biographies at the back.

Additional thanks are due to Captain Allen Brink FNI of AR Brink and Associates, Joe Collins of Collins Marine Consultants Ltd and Oliver Powell.

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Introduction

by Captain Ian McNaught CVO MNM FNI – Deputy Master, Trinity House

Our role at Trinity House is to provide a system of aids to navigation around the UK coastline to help minimise the risk to mariners as they navigate through our busy waters. But as we all know, accidents still happen and those accidents need to be investigated so we can understand the causes and, through lessons learned, to prevent the same happening to others.

Whether we like it or not, we live in a litigious world. Incidents at sea, whether collision, grounding, cargo claims, serious injury to crew on board or any other incident that may occur, usually involve a legal process to settle the matter. In this way, damages are apportioned and claims or blame settled. That is where the gathering and presentation evidence becomes critical.

One of our roles at Trinity House is to sit in the Admiralty Court as nautical assessors. Through this we can see first-hand how the production and presentation of evidence is used to bring such processes to a right and proper conclusion, once judges have heard all that evidence put before them.

Of course, before such incidents get to court, seafarers working on ships play a most important role in collecting the evidence that will help to resolve the issue fairly and, one hopes, in a timely manner. Such evidence is considered proof that tends to establish facts during investigation.

Information that may constitute evidence, along with all the electronic gathering of data automatically carried out on board modern ships, can take the form of logbooks, time sheets, photographs and investigation results from third parties.

Evidence, objective as well as subjective, is analysed by lawyers, investigating bodies, auditors, insurers, underwriters, consultants etc. The facts need to be thoroughly understood, together with background data on the actions that led to the casualty or accident.

Therefore, it is imperative that seafarers understand the need for accurate evidence after an accident on board ship. Seafarers are invariably responsible for gathering data with respect to the vessel's day-to-day operations. Evidence, in all its various forms, must be taken by seafarers after an incident.

To assist them in this task I can only commend this series of publications by The Nautical Institute, developed over the years from *The Master's Role in Collecting Evidence* back in 1989. They provide guidance from highly experienced experts that should be used by all seafarers. In this way I hope that they will be able to properly protect themselves and defend their actions by the production of such evidence.

March 2019

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Chapter 1

Updating the guidelines for collecting maritime evidence

by John Noble, Joint Technical Editor

Readers of this book may be aware of the development of The Nautical Institute's publications dealing with evidence collection written by Dr Phil Anderson and the Institute's North East England Branch. The series began with *The Master's Role in Collecting Evidence* in 1989; the second edition, published in 1997, was titled *The Mariner's Role in Collecting Evidence*. A further update occurred in 2006 when the publication was titled *The Mariner's Role in Collecting Evidence – in Light of ISM*. This was augmented in 2010 by a handbook, authored by North P&I Club, called *The Mariner's Role in Collecting Evidence – Handbook*. In May 2017 at the Institute's AGM the first volume in this fourth edition series, *Guidelines for Collecting Maritime Evidence*, was published.

The initial publications were primarily aimed at those on board a ship when an incident occurred where crew members had the opportunity of collecting evidence as 'first responders'. The purpose of immediate crew involvement was to ensure uncontaminated evidence was recorded and stored to be used in any follow-up investigation relating to statutory requirements and claim resolution.

Volume 1 of *Guidelines for Collecting Maritime Evidence* dealt with evidence largely collected by non-crew personnel who attend ships at an early stage to undertake a variety of evidence-collection tasks. Contributors included marine lawyers, surveyors, official marine accident investigation bodies (in the UK this is the Marine Accident Investigation Branch, MAIB), brokers and those engaged in insurance. The main purposes of evidence collection are to help authorities establish what occurred to lead to the incident and to allow owners, insurers and P&I clubs an opportunity to deal with claim resolution. Each contributor to that first volume has acknowledged expertise in the fields under scrutiny.

In this second volume, evidence collection is taken a step further. Claim handlers need to be satisfied that the real cause of damage is established to allow liability issues to be determined. This is where the specialist expert's input is needed. When incidents first occur it is not always clear what type and level of expertise may be required to allow claim handlers to work. They have to establish the level and grade of importance that might be required at the time when the 'who pays' issues need to be handled and resolved. Often some time elapses before governing issues surface; in many instances, such as fire, for example, it becomes immediately apparent.

The recording of data on board and ashore is now being achieved by electronic means: ECDIS, VDR and AIS are tools to assist investigators. The investigators work with these tools to establish with some accuracy what actually happened in, for example, a collision or grounding incident. Considerable effort has been made to ensure readers will gain a basic understanding of what is involved in the post-incident processes.

The content of this volume is of a more specialist nature than in the first volume. It offers to Nautical Institute members and a wider readership a greater understanding of what goes on once matters leave the ship to be resolved ashore. In my experience, all too often those who were on board a ship at the time of an incident have little to do in the follow-up processes.

Every year many hundreds or even thousands of incidents result in claims being initiated by aggrieved parties such as cargo owners, charterers, underwriters and authorities. There are well tried and tested dispute resolution paths such as face-to-face negotiations, mediation, arbitration and the courts. However, only on rare occasions are witnesses from a ship called to give oral evidence. Usually these would be the Master, chief engineer or watchkeepers. Most seafarers who might have been aboard at the time are rarely afforded an opportunity of finding out how matters are ultimately resolved. It is hoped that this volume will help readers understand at least some of the ways that specialist issues can be settled.

As the process of claim resolution develops, so those entrusted in dealing with the issues arising increasingly rely on 'expert' assistance from specialists, and several have contributed to the chapters that follow. Mr Justice Teare, in Chapter 13, deals with how the courts might rely on the input from electronic evidence (ECDIS, VDR and AIS). Interestingly, though, he points out that a paper presentation of the results of such evidence acts as a most helpful visual aid! Each chapter deals with a specific area of specialist evidence collection and utilisation.

A major feature of this volume is the importance and use of electronic evidence in the conduct of claim resolution. There can be little doubt that, as the use of electronics in shipping develops, so the need for electronic evidence will increase. At the moment, such evidence often has to be extracted by specialists, invariably from the equipment manufacturers. In the future it is likely that evidence extraction will be conducted by independent specialist experts not from the equipment manufacturers.

In the handling of claims, resolution is no longer just a matter for the traditional handler. Where electronic evidence is introduced, a claim handler must have an appreciation of the scope and limitations of this type of evidence and seek expert assistance when required.

That is not to say that the traditional methods of evidence collection are now redundant. The 'mark one eyeball' plays a crucial part in post-incident activities. Many on-site attendees, such as port surveyors, can now report back in real time to their principals located far away. Care has still to be taken to ensure instant evidence does not lead to immediate conclusions. There must be a realistic cyber-security system in place to ensure the information collected goes only to the intended recipients.

Updating the guidelines for collecting maritime evidence

This immediate style of reporting does offer the early opportunity for a principal to consider if specialist expertise at the ship is appropriate. Some activities, such as collecting specimen samples, are usually conducted manually. Given real-time electronic reporting, the expert may be able to observe how samples are taken and advise on their storage before they are sent to a laboratory for analysis.

In concluding this introduction I hope to have whetted the reader's appetite for exploring the wide range of specialist expertise often required in dealing with the aftermath of an incident involving ships, crews and the environment.