

# **Memorandum of Understanding**

*between*

**The Marine Accident Investigation Branch  
and The Association of Chief Police Officers**

**27 March 2006**

**MAIB**  
MARINE ACCIDENT INVESTIGATION BRANCH



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## **Glossary**

ACPO	-	Association of Chief Police Officers
ARI	-	Accident, Reporting and Investigation
CI	-	Chief Inspector
CPIA	-	Criminal Procedures and Investigation Act
CPS	-	Crown Prosecution Service
DCI	-	- Deputy Chief Inspector (MAIB) - Detective Chief Inspector (POLICE)
DCO	-	Duty Co-Ordinator
DfT	-	Department for Transport
DHB	-	Duty Head of Branch
LI	-	Lead Inspector – (MAIB)
IIC	-	Investigator In Charge (MAIB)
FLO	-	Family Liaison Officer
MAIB	-	Marine Accident Investigation Branch
PACE	-	Police and Criminal Evidence (Act/Codes)
PE	-	Preliminary Examination
SIO	-	Senior Investigating Officer (POLICE)
UK	-	United Kingdom
VDR	-	Voyage Data Recorder

# **Memorandum of Understanding between the Marine Accident Investigation Branch (MAIB) and the Association of Chief Police Officers (ACPO).**

## **1 FRAMEWORK OF UNDERSTANDING**

### **1.1 Introduction**

This Memorandum of Understanding is made between the Chief Inspector of Marine Accidents, Marine Accident Investigation Branch (MAIB), and the Chair of the Association of Chief Police Officers Marine Diving Committee on behalf of ACPO.

The aim is to ensure effective investigation of marine accidents, while maintaining the independence of all parties, and reinforcing the importance of effective cooperation between MAIB and the police in all aspects of such an investigation. However, as recognised by the CPS, public interest requires that safety considerations are of paramount importance, which may on occasion mean that the interests of the MAIB investigation may take priority over the criminal investigation.

The underlying principles of this Memorandum of Understanding are:

- A technical investigation will be entirely independent from, but can also proceed in parallel to, a police investigation;
- The public interest requires that safety considerations are of paramount importance;
- There is a need for early contact and close co-operation between the MAIB investigator-in-charge and senior investigating Police officer.
- Where possible, there should be an exchange of factual information concerning the details of an accident or incident as both forms of investigation proceed.

### **1.2 Parties to the Agreement**

#### ***1.2.1 The Marine Accident Investigation Branch***

The Marine Accident Investigation Branch (MAIB) was set up in 1989 with responsibility for investigating accidents to determine their circumstances and causes. Its legislative powers are primarily contained in *Part XI of the Merchant Shipping Act 1995* and associated secondary legislation. The *Merchant Shipping (Accident Reporting and Investigation) Regulations 2005* put this framework into effect.

These regulations are the foundation of the MAIB's work. They apply to merchant ships, fishing vessels and (with some exceptions) pleasure craft. They define accidents, set out the purpose of investigations, and lay down the requirements for reporting accidents. They make provision for the ordering, notification, and conduct of investigations; but allow inspectors the necessary discretion, given the wide variety of cases.

The Chief Inspector of Marine Accidents reports directly to the Secretary of State for Transport on the investigation of specific accidents. The MAIB has four teams of accident investigators, each consisting of a principal inspector and four inspectors. All are professionally qualified and experienced in marine fields. Administrative staff deal with finance, contracts, records, data analysis, publications, and provide general support to inspectors at all stages of administrative enquiries, preliminary examinations, and full investigations.

The MAIB is independent of the Maritime and Coastguard Agency (MCA).

### **1.2.2 The Association of Chief Police Officers**

The Association of Chief Police Officers (ACPO) was set up over 50 years ago so that work in developing policing policies could be undertaken in a single location, on behalf of the Service as a whole, rather than in 43 separate forces across the country.

The Association is not a staff association (the separately constituted Chief Police Officers' Association fulfils that function). ACPO's work is undertaken on behalf of the Service rather than its own members. The Association has the status of a private company limited by guarantee. It conforms to the requirements of company law, and is governed by a Board of Directors.

ACPO is funded by a combination of a Home Office grant, contributions from each of the 43 Police Authorities, membership subscriptions, and the proceeds of its annual exhibition.

ACPO's 280-strong membership is made up of police officers holding the rank of Chief Constable, Deputy Chief Constable or Assistant Chief Constable, or their equivalents. They may come from the forty-three forces of England, Wales and Northern Ireland, national police agencies and certain other forces in the UK, the Isle of Man and the Channel Islands. Certain senior non-police staff may also be members of ACPO.

## **1.3 Investigations**

### **1.3.1 MAIB Technical Investigations**

The MAIB inspectors conduct technical investigations into marine accidents. The sole objective of any MAIB investigation into an accident, as laid out in the 2005 Regulations is *"the prevention of future accidents through the ascertainment of its causes and circumstances. It shall not be the purpose of an investigation to determine liability, nor, except so far as necessary to achieve its objective, to apportion blame"*.

MAIB investigations are made up of three stages. After receiving notification of an accident, the MAIB will take a decision on what level of response is required. These stages often overlap, and in the case of major accidents may all occur simultaneously. The stages of the investigation are presented in full in Annex A. In summary:

- Stage 1 is the administrative enquiry. In some accidents, the ship owner's or officer's own investigation is sufficient. The MAIB may conduct an administrative enquiry by correspondence or telephone to seek further details on the accident.
- Stage 2 is the preliminary examination (PE). This is the first stage of a full investigation. Its purpose is to identify the causes and circumstances of an accident to see if it meets the criteria required to warrant further investigation. If, at this stage, it is decided that further investigation is not warranted, all involved parties will be notified.
- Stage 3 is the full investigation, leading to a published report of the safety lessons learned. Whether a full MAIB investigation and publicly available report is warranted, will normally be decided following a preliminary examination. It usually takes seven months to complete an investigation and to publish a report.

### **1.3.2 MAIB Inspectors**

MAIB inspectors have powers to investigate accidents involving or occurring on-board UK ships anywhere in the world, and ships of any nationality in UK territorial waters including accidents that occur on UK inland waters. They are appointed under section 267 of the *Merchant Shipping Act 1995*, and their powers of investigation derive from section 259 of the same Act. These powers allow them to enter any premises in the UK or to board any UK ship world-wide, as well as any other ship which is present in UK territorial waters, for the purposes of making such examination or inspection as the inspector considers necessary. MAIB inspectors also have wide ranging powers to interview (see Section 3).

The Investigator-in-charge is the principal inspector of the lead team investigating an incident. Generally, the investigator-in-charge will remain at MAIB headquarters, and will lead the decision-making and direction of a preliminary examination or investigation from Southampton. Their main function is to provide the essential strategic overview. They will lead on the decision-making using the information provided by the Lead Inspector. However, in the case of a major accident, the investigator-in-charge will also deploy to the site.

The Lead Inspector (LI) is the team member who will lead the conduct of the preliminary examination and any potential subsequent investigation whilst on-site. They are also responsible for any follow-up work, and will usually lead on the production of any written documents. The decision on who will act as LI is dependent on the nature of the incident, and where possible is taken with the background specialism of the inspector in mind.

### **1.3.3 Police Investigations**

The Police conduct police investigations where suspicion of a criminal offence arises. The police responsibility is to protect life and property, prevent and investigate offences, and prosecute offenders. They also have an immediate role at the scene of an incident to maintain public order and restore normality as soon as practicable, and to secure and preserve evidence. Prosecution of

criminal offences is carried out by the Crown Prosecution Service, to whom the police submit files of evidence. The purpose of any prosecution is not to establish the circumstances of an accident or incident, but to prove beyond reasonable doubt that an offence has been committed. The police also conduct enquiries on behalf of and as directed by H.M. Coroner.

#### **1.3.4 Police Officers**

Police powers are widespread, and are contained in a number of Acts and secondary legislation. In particular, in England and Wales, key powers of arrest, interview, evidence gathering and use are outlined in the *Police and Criminal Evidence Act 1984 (PACE)*. Where injury or serious damage has occurred, the Police usually attend the scene of the incident and commence preliminary enquiries. Where foul play or criminal offences are suspected, a more thorough police investigation will ensue. It is most likely that the police will carry out a major investigation, supervised by an SIO (Senior Investigating Officer), when there has been a fatality.

#### **1.3.5 Coroners**

A Coroner, makes enquiries into all circumstances of sudden, violent or unnatural death. This includes marine fatalities. When a death occurs and is reported to the coroner, the body falls under his/her jurisdiction until released to relatives for funeral purposes.

Reports concerning dead bodies within their jurisdiction will generally be made by the police, hospital authorities, Registrars of Births and Deaths, or medical practitioners. In each case, the coroner will need to consider the particulars provided, and give directions for a post mortem examination or such other form of investigation as may be considered appropriate under the circumstances. Where circumstances of a suspicious nature occur or suspicion of criminal circumstances surrounds the death, the coroner will consult with the senior police officers concerned regarding action to be taken. The coroner will also afford to the police such authority as they may require, where acting on his/her behalf, to conduct further investigation regarding the body (see chapter 6).

In any case where criminality is suspected, the MAIB lead inspector, police, and where involved the Coroner, will discuss the conduct of the investigation. The MAIB usually works with the Coroner's Officer. The MAIB provides information on its role and purposes in a leaflet called "*Information for Coroners and Procurators Fiscal*" at Annex F of this document. The leaflet also explains the responsibilities of the MAIB with regard to the recovery and identification of bodies.

### **1.4 Co-operation between Technical and Criminal Investigations**

The Lord Chancellor has provided guidance on the relationship between Police inquiries and technical investigations conducted by organisations such as the MAIB. This guidance is entitled "*Disasters and the Law – Deciding the form of Inquiry*" (16 May 1991). In this Memorandum, the Lord Chancellor states that:

**“It would require firm indications of serious criminality to justify a criminal investigation taking precedence over an inquiry held in public (or at least whose results are to be made public) where otherwise the public interest requires that such an inquiry be held. Colleagues will wish to bear in mind that the holding of such an inquiry in advance of criminal proceedings may adversely affect the ultimate prospects of a successful prosecution, but nevertheless, unless the criterion mentioned in the previous sentence is met, this is likely to be justified.”**

The MAIB and Police should establish and maintain good liaison and co-operation throughout their respective technical and criminal investigations. Both investigations should proceed in parallel, without obstruction.

The following areas of mutual interest have been identified:

- The notification of incidents and accidents, and “first contact” between the MAIB and the investigating police force;
- Interviews, declarations and statements;
- Evidence gathering and interpretation, including forensic examination and use;
- The operation, removal and interpretation of Voyage Data Recorder's and other electronic equipment's information;
- The timing of MAIB publications in the event of possible prosecutions;
- Maintaining an effective dialogue with families; and,
- The process in the event of a major accident.

### **1.5 General Principles of Co-operation**

In keeping with the underlying principles set out in paragraph 1.1, the following objectives are agreed. Each organisation will:

- Ensure effective co-operation and contact between the MAIB Investigator In Charge (IIC) and the Police senior investigating officer (SIO) as soon as is practicable after an incident or accident has been reported;
- Maintain contact throughout the conduct of the investigations by holding regular liaison meetings between the MAIB LI and the Police SIO;
- Exchange any factual information that is considered important to both investigations;
- Maintain a regular dialogue after the on-scene investigation has been completed;
- Continue to exchange information on the progress of proceedings, and provide timings on potential report publications or potential criminal proceedings.

## **1.6 Monitoring of the Memorandum**

The working of the agreement, and the need for changes to the text, will be reviewed periodically by both parties to this Memorandum. Meetings may be held periodically between the Chief Inspector of Marine Accidents and the Chair of the ACPO Diving and Marine Working Group to review the Memorandum. Other persons may be invited to attend as appropriate. Any amendments proposed would need to be agreed by all parties.

For the purposes of monitoring and updating the memorandum, a single point of contact has been identified within each signatory party. At the MAIB, this point of contact is the Project Officer. They can be contacted on the MAIB switchboard number, and via the MAIB email address supplied. At the ACPO, this contact is the Secretary to the ACPO Diving and Marine Working Group. Contact details can be requested from the ACPO switchboard.

Any issues or problems arising with the implementation of this Memorandum during the conduct of preliminary examinations and/or full investigations will be resolved by the Deputy Chief Inspector at the MAIB, and the Chair of ACPO Diving and Marine Working Group. Contact via the ACPO switchboard.

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## **2. NOTIFICATION**

### **2.1 Principle**

The MAIB investigator-in-charge (IIC) and the police senior investigating officer (SIO) will make early contact, enabling good communication and information exchange.

### **2.2 MAIB and Police Notification**

The MAIB would like to be notified of any accident as soon as possible. To this end, the *Merchant Shipping (Accident Reporting and Investigation) Regulations 2005* state that:

6(1) When an accident occurs the following persons associated with the ship shall send a report to the Chief Inspector as soon as is practicable following the accident and by the quickest means available:

- (a) the master or, if he has not survived, the senior surviving officer, and
- (b) the ship's owner unless he has ascertained to his satisfaction that the master or senior surviving officer has reported the accident in accordance with paragraph (a).

6(2) In addition to any report made under paragraph (1), the following persons shall report to the Chief Inspector as soon as is practicable and by the quickest means available any accident of which they are aware-

- (a) in the case of an accident within or adjacent to the limits of any harbour, the harbour authority for that harbour;
- (b) in the case of an accident on any inland waterway in the United Kingdom, the person, authority or body having responsibility for that water; or
- (c) an official of the MCA in respect of an accident with United Kingdom waters.

6(3) A person making a report pursuant to paragraph (1) or (2) shall, in so far as is practicable, include the following information:

- a) name of ship and IMO, official or fishing vessel number;
- b) name and address of owner;
- c) name of the master, skipper or person in charge;
- d) date and time of the accident;
- e) where from and where bound;
- f) latitude and longitude or geographical position in which the accident occurred;
- g) part of ship where accident occurred if on board;
- h) weather conditions;
- i) name and port of registry of any other ship involved;
- j) number of people killed or injured, together with their names, addresses and gender;
- k) brief details of the accident, including, where known, the sequence of events leading to the accident, extent of damage and whether the accident caused pollution or a hazard to navigation;
- l) if the ship is fitted with a voyage data recorder, the make and model of the recorder.

As the police are likely to be notified about an accident through an emergency call earlier than the MAIB, MAIB would welcome early notification from the police force taking the call. Information can be passed to the MAIB via the accident reporting line on Page 4. Out of hours, the Department for Transport duty officer will answer any call on that line and contact the on-call Duty Co-ordinator.

Should the MAIB be notified about an accident before the Police have been contacted, and it is considered that the Police have an interest, the MAIB will notify the police force in whose area of jurisdiction the accident occurred.

### **2.3 Procedure for early contact**

MAIB normally deploy an investigating team of two or more inspectors as an on-scene investigation team, with one assuming the position of lead inspector (LI). The LI would be responsible for the overall conduct of an on-scene accident investigation, reporting progress to the MAIB Investigator-in-charge (IIC). A police investigation is led by a Senior Investigating Officer (SIO), usually of the rank of Detective Inspector, (DI) Detective Chief Inspector (DCI) or Detective Superintendent.

The IIC and the SIO should be in early contact. The SIO should telephone the MAIB headquarters at the earliest possible opportunity and, as far as is practicable, before any on scene investigation has commenced.

At this stage the MAIB can pass on the following information:

- An early indication whether the Branch is deploying a team to the accident site;
- Where available, an estimated time of arrival, if a team has already been deployed;
- Contact details for the investigation team; including the on-site lead inspector's mobile number;
- Advice on Voyage Data Recorders (VDRs) and other technical issues that may require urgent attention. This should also include a discussion about other vessels ("witness vessels") in the area that may need to be contacted as part of either investigation. There is a need to establish whether these vessels are also carrying VDR equipment, and to arrange that the data is preserved and the systems retrieved (see Chapter 5); and,
- Details of what has been or will be retrieved from the accident site. Depending on whether the vessel(s) has been saved, or wreckage retrieved, the IIC and SIO should discuss safe storage, protection and security. Beyond removing items of evidence that might otherwise be damaged to an agreed safe location, as little as possible should be disturbed until the LI and the SIO have agreed a plan of action.

The SIO may also be able to clarify any outstanding points from the list (a) to (l) outlined under section 2.2.

#### **2.4 On Scene**

It is vital that the accident scene or wreckage should be contained and protected at the earliest possible opportunity. It is essential that the number of people in and around the wreckage should be kept to an absolute minimum. Vital evidence can be destroyed by well-intentioned people climbing over or moving wreckage, or by moving controls from their original positions. It is the responsibility of the police to preserve the wreckage and provide initial security for the site. The level of scene preservation and security should be reconsidered throughout the investigation, and in particular at the first meeting between the LI and SIO.

Critically, after any initial emergency response phase, the accident scene and wreckage should be disturbed as little as possible until the arrival of the MAIB inspectors.

#### **2.5 On-scene Safety**

The safety of personnel on-scene is an important consideration for all organisations involved in accident scene operations. Organisations working at the scene should retain responsibility for the safety of their own personnel and of others working under their direction. To ensure a high level of safety management is maintained at all times, it is imperative that any organisations present co-operate and co-ordinate their activities.

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### 3. INTERVIEWS AND DECLARATIONS

#### **3.1 Principle**

The MAIB investigating team shall have primacy of interview of any person involved or connected to an accident. The police interview, whether carried out under caution and/or recorded on video, will in no way be affected or its validity damaged in a court of law because it has taken place after an MAIB interview.

#### **3.2 The Interview Process**

During the course of an investigation, an MAIB inspector may interview any person connected with an accident, particularly those involved in or witness to the accident. The purpose of an MAIB interview is to identify the causes and circumstances so as to be able to promulgate recommendations and safety lessons, with the aim of improving the safety of life at sea.

The Police may interview anyone deemed to be a witness to the accident, and will also interview any other person who may have possession of information relevant to their enquiries. The Police may interview those not suspected of criminal activity without caution, to ascertain the facts of an accident. The purpose of a police interview is to establish the truth, identify the cause of the accident and consider evidence of criminal offences, facilitating the compilation of reports for the coroner and/or the Crown Prosecution Service.

##### **3.2.1 MAIB Powers of Interview**

Under the *Merchant Shipping Act 1995*, MAIB Inspectors have the following powers to carry out an interview and take a declaration:

259(2) Such an inspector-

- (i) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (C) above –
  - (i) to attend at a place and time specified by the inspector, and
  - (ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask, and
  - iii) to sign a declaration of the truth of his answers;

Not all evidence the MAIB inspectors collect can be disclosed. This largely applies to interview evidence. Most importantly, the MAIB cannot release any interview declarations or inspectors notes pertaining to interviews. The *Merchant Shipping (Accident Reporting and Investigation) Regulations 2005* qualify the situations under which an MAIB inspector might disclose evidence:

12 (1) Subject to the following paragraphs, the names, addresses or any other details of anyone who has given evidence to an inspector shall not be disclosed.

12 (2) The following documents or records shall not be made available for purposes other than the investigation, unless a Court orders otherwise –

- (a) subject to paragraph (3), all declarations or statements taken from persons by the inspector or supplied to him in the course of his investigation, together with any notes, or voice recordings of interviews;
- (b) medical or confidential information regarding persons involved in an accident;
- (c) any report made under regulation 6(4) or (5);
- (d) copies of the report other than the final report [...]

12 (3) A person who has given a declaration or statement to an inspector in the course of an investigation may make available a copy of his declaration or statement to another person as he sees fit.

### **3.2.2 Police Powers of Interview**

The widespread powers of the police to interview and take statements are outlined by the *Police and Criminal Evidence Act: Code C – Questioning of Persons by Police Officers*. The powers outlined refer particularly to the period after a suspect has been cautioned. The police clearly have powers to interview without caution those not suspected of criminal activity, to ascertain the facts of an accident:

10.1 A person whom there are grounds to suspect of an offence...must be cautioned before any questions about an offence, or further questions if he answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g.:

- (a) solely to establish their identity or ownership of any vehicle;
- (b) to obtain information in accordance with any relevant statutory requirement,
- (c) in furtherance of the proper and effective conduct of a search, e.g. to determine the need to search in the exercise of powers of stop and search or to seek co-operation while carrying out a search;
- (d) to seek verification of a written record
- (e) when examining a person in accordance with the Terrorism Act 2000, Schedule 7 and the Code of Practice for Examining Officers issued under that Act.

The caution must be given on:

- (f) arrest
- (g) all other occasions before a person is charged or informed they may be prosecuted.

The Code also clarifies the interview process for Police Officers and their suspects:

11.1 An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence, or further offence.

11.2 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a police station or other authorised place of detention, unless the consequent delay would be likely to:

(h) lead to:

- interference with, or harm to, evidence connected with an offence;
- interference with, or physical harm to, other people; or
- serious loss of, or damage to, property;

(i) lead to alerting other people suspected of committing an offence but not yet arrested for it; or

(j) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have been put in order to avert that risk.

### **3.3 Access to Interview Witnesses to an Accident**

The MAIB investigating team must have immediate and unrestricted access to any person involved or connected to an accident. If the decision is taken to interview or take a declaration, it must take place before the police carry out an interview. It may be necessary to carry out more than one interview to achieve this.

Witnesses to an accident have no right to silence at an MAIB interview. Primacy given to MAIB will allow witnesses to be full and frank about what they saw or remembered of an accident, before they enter the more restrictive legal police process. It will also enable the MAIB to make a more rapid judgement on the causes and circumstances of the accident, and to promulgate any urgent and time-critical safety recommendations.

### **3.4 Prejudice**

The fact that the MAIB interviews will take place before the police, and are confidential, will in no way prejudice the process or police interview. Indeed, keeping the MAIB interview process confidential, and not sharing copies of declarations with the police, will ensure that there can be no possibility of prejudice across accident investigations. The police interview is a separate process that can still be carried out within the guidelines of the PACE code and more widely with respect to the Achieving Best Evidence practices. The police interview, whether carried out under caution and/or recorded on video, will in no way be affected or its validity damaged in a court of law because it has taken place after an MAIB interview.

### **3.5 Sharing Statements**

MAIB interviews and declarations are confidential. On rare occasions, a formal declaration will be taken during an interview and the interviewee will be

given a copy. The interviewee may make his copy available to others. Police statements are not undisclosable, and may be shared with MAIB inspectors. Upon request, the SIO will share police statements with the LI for the purposes of furthering and clarifying detail.

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## **4. EVIDENCE COLLECTION AND USE**

### **4.1 Principle**

An effective evidential trail is always agreed, and the integrity of any evidence is constantly maintained. Evidence should be "shared" between the two investigations.

### **4.2 Access to Evidence**

During the course of an investigation, a variety of types of evidence are likely to be necessary to both the MAIB and police investigations. This could include written evidence, as well as material technical evidence.

#### **4.2.1 MAIB Access**

In accordance with the *Merchant Shipping (Accident Reporting and Investigation) Regulations 2005*, the MAIB should have access to evidence in the following ways:

9(1) Following an accident involving a United Kingdom ship which is reportable under regulation 6, the persons mentioned in paragraph (3) shall so far as is practicable ensure that all-

- (a) charts;
- (b) log books;
- (c) electronic and magnetic recording and video tapes, including information from a voyage data recorder or recording system relating to the period preceding, during and after the accident; and,
- (d) all documents or records which might reasonably be considered pertinent to an accident are kept and that no alteration is made to recordings or entries therein.

9(2) In the case of an accident involving a United Kingdom ship, the persons mentioned in paragraph (3) shall also ensure that -

- (a) all information from a voyage data recorder or recording system relating to the circumstances of an accident is saved and preserved, in particular by taking steps, where necessary, to prevent such information from being overwritten; and
- (b) any other equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practicable left undisturbed.

9(4) This duty shall continue until such time as:

- (a) notification is received from the Chief Inspector that no investigation is to take place; or
- (b) 28 days have passed since the Chief Inspector received a report referred to in regulation 6(1) and no notice has been sent that he has decided to investigate; or

(c) the Chief Inspector or the inspector carrying out the investigation gives written notification that he no longer requires the information.

9(6) An inspector may prohibit, pending investigation, access or interference with any ship, ship's boat or other equipment involved in an accident.

9(7) The Chief Inspector may, if there are grounds for concern that access a vessel, crew, or evidence, require the master or owner of a ship to ensure that the ship remains accessible within UK waters until the process of collecting or preserving evidence is complete.

Powers of access are laid out in greater detail in *the Merchant Shipping Act 1995 subsection 259(2)*:

259(2) Such an inspector –

(a) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) –

(i) enter any premises, or

(ii) board any ship,

if he has reason to believe that it is necessary for him to do so;

(b) may, on entering any premises by virtue of paragraph (a) above or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Secretary of State and any equipment or materials he requires;

(c) may make such examination and investigation as he considers necessary;

(d) may give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (C) above;

(e) may take such measurements and photographs and make sure recordings as he considers necessary for the purpose of any examination or investigation under paragraph (C) above;

(f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;

(g) may, in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);

(h) may, in the case of any such article or substance as is mentioned in paragraph (g) above, take possession of it and detain it for so long as is necessary for all or any of the following purposes' namely –

(i) to examine it and do to it anything which he has power to do under that paragraph,

(ii) to ensure that it is not tampered with before his examination of it is completed,

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;

(j) may require the production of, and inspect and take copies of or of any entry in, -  
(i) any books or documents which by virtue of any provision of this Act are required to be kept; and  
(ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (C) above;  
(k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

#### **4.2.2 Police Access**

The police require access to evidence as it is fundamental for a criminal prosecution. Access to evidence and powers of seizure are outlined in *The Police and Criminal Evidence Act 1984*:

19(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing –  
(a) that it has been obtained in consequence of the commission of an offence; and  
(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

3 (a) that it is evidence in relation to an offence which he is investigating or any other offence.

18(1) A constable may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence; if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates –  
(c) to that offence; or  
(d) to some other arrestable offence which is connected with or similar to that offence.

#### **4.3 Removal and Preservation of Evidence**

The Criminal Justice and Police Act 2001, Part 2, gives police the powers of removal and preservation of evidence. PACE states:

7.7 Officers must be careful they can only exercise these powers when it is essential and they do not remove any more material than necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly when they are involved in business or activities such as journalism or the provision of medical services. Officers must carefully consider if removing copies or images of relevant material or data would be satisfactory alternative to removing originals. When originals are taken, officers must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable.

7.12 When an officer exercises a power of seizure conferred by sections 50 or 51 they shall provide the occupier of the premises or the person from whom the property is being seized with a written notice:

- (i) specifying what has been seized under the powers conferred by that section;
- (ii) specifying the grounds for those powers;
- (iii) setting out the effect of sections 59 to 61 covering the grounds for a person with a relevant interest in seized property to apply to a judicial authority for its return and the duty of officers to secure property in certain circumstances when an application is made;
- (iv) specifying the name and address of the person to whom:
  - notice of an application to the appropriate judicial authority in respect of any seized property must be given
  - an application may be made to allow attendance at the initial examination of the property.

MAIB inspectors must be allowed unrestricted access to an accident scene and to any preserved wreckage and evidence. All inspectors at the scene of an accident would wear clothing as directed by the SIO to prevent evidence contamination, and ensure the health and safety of personnel.

Any equipment associated with a marine accident should be left undisturbed until a Marine Accident Inspector has arrived on-scene. As an expert in his field, an inspector will recognise evidence crucial to an accident investigation that may not be needed for a police investigation. It is vital that such evidence is not disturbed or destroyed inadvertently before the arrival of the inspector. However, prior to their arrival, the MAIB inspectors may request that the police collect or protect some technical evidence on their behalf. On arrival on-scene, the lead inspector and the SIO should discuss the preservation and retention of anything deemed integral to either investigation. If, for any reason, the investigating police force has removed original evidence, the MAIB inspectors must be made immediately aware and be allowed to attend the storage location.

#### **4.4 Copies of Documentary Evidence**

Under the *Police and Criminal Evidence Act 1984*, the Police may provide copies or photographs of evidence as appropriate, whilst retaining the original. In particular, subsection 21(5) - (7) allows the police to photograph or copy, or have photographed or copied, anything they have the power to seize.

On most occasions, the MAIB would be content to take a copy, either by way of a photocopy or photograph, of paper-based evidence. However, the MAIB must be given immediate access to these types of record and be provided with, or allowed to take, copies as soon as is practical.

#### **4.5 Technical Evidence**

The MAIB inspectors should have management control of the collection of all technical evidence. Their expertise and knowledge of accident scenes and in particular of the infrastructure of all types of vessels, will enable them to identify and collect technical evidence expeditiously, and inflict the minimum amount of damage necessary during its removal from the site. Where any technical evidence is taken into the custody and care of the MAIB, compliance with the principles of continuity and preservation of evidence will be assured.

The MAIB will keep comprehensive records of all movements, transfer and examination for the information of the disclosure officer. In the most exceptional circumstances, the SIO may need to seek clarification from the Chief Inspector of Marine Accidents on how technical evidence will be examined and its integrity maintained.

The MAIB will share the results of any testing of technical evidence with the police. In the same fashion, where the police have retained any form of evidence as agreed with the MAIB lead inspector, then the results of any testing should be shared with the MAIB. This would include any agreed forensic testing, as well as any physical testing to persons where breath tests or any related blood, urine, or drug samples are taken.

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### **5. VOYAGE DATA RECORDERS**

#### **5.1 Principle**

The first authority at the accident site must check that any VDR data has been saved. The MAIB will retrieve and remove the equipment or data, and a copy will be passed to the Police.

#### **5.2 Ensuring the Preservation of the VDR Equipment/Data**

The carriage of Voyage Data Recorders (VDRs) on passenger ships and new cargo ships is having a significant and increasing impact on marine accident investigation. The MAIB has built up a comprehensive playback capability in this area, with VDR data forming a critical feature of many MAIB investigations. However, VDR data is also evidence and could be an important feature of the police evidential trail.

A variety of VDR systems are already on the market. A common feature of all the systems is that they are set up on a time-limited continuous loop. This means that after a set time period they begin to record over themselves and previously stored data is lost. As a result, soon after an accident or incident, the VDR data must be preserved to prevent it from being over-written. The ship's crew should manually save the VDR data. However, on occasion they may be unfamiliar with how the system works. In all cases therefore, the police, as the first authority on scene, must check that any VDR data has

been saved. Police officers can be directed on how to save the VDR data during the initial conversation with the MAIB.

In the case of a catastrophic incident where the vessel has been lost, the last twelve hours of data will be automatically saved to a protective capsule.

### **5.2.1 Retrieval**

After the VDR data has been saved, the hardware should be left undisturbed. The MAIB Investigating team will have, as part of their equipment, secure carrying equipment for the VDR data. Although the Police have widespread powers to retain anything that they believe to be evidence, the removal and temporary storage of VDR equipment/data should be left to the MAIB investigating team. The availability of VDR hard-disks and equipment is limited, and it is important that the VDR is left in an operational state. By taking first receipt of the equipment, the MAIB team will be protecting the integrity of the system. The current *Merchant Shipping (Accident Reporting and Investigation) Regulations 2005* state that:

12(7) Copies of information obtained from a voyage data recorder or from any other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in paragraph 2(a)), video recordings and other electronic or magnetic recordings and any transcripts from such information or recordings, may be provided at the discretion of the Chief Inspector to the police or other official authorities.

The SIO may require the MAIB investigating team to underwrite the removal of the equipment/data, in the form of a written record or receipt signed by the MAIB team stating that they have taken the VDR system into their possession. The evidential trail would thus be maintained.

### **5.2.2 Playback**

Depending on the system installed in the vessel, the first opportunity the MAIB investigating team may have to playback the VDR recording will be on their return to the MAIB headquarters in Southampton. A member of the police investigating team may observe playback of the VDR at MAIB Southampton. The SIO and the MAIB LI should agree a suitable date and time when this will take place.

### **5.2.3 Interpretation**

During the course of playback, the MAIB inspectors will provide factual information about the VDR display. In keeping with the independent, impartial nature of the MAIB, no subjective statements, or analysis of what is being displayed or what may have occurred will be provided. The MAIB will provide the investigating police force with the name and contact address of an alternative VDR playback facility, and also a name of expert witnesses who may be able to provide an interpretative role. In most cases, the Maritime and Coastguard Agency should be able to fulfil this role.

#### **5.2.4 Copying and Retention**

During the course of playback, the MAIB will, on request, make three copies of the VDR material. The first copy will be retained by the MAIB, as a reference for the ongoing investigation. The second copy will be provided to the police for their investigation. The third copy will be sent to the vessel owners, as the legal owners of the data. A copy of the VDR data will also be stored on the MAIB's playback hard-drive. By retaining a downloaded copy, with documented continuity, the evidential integrity of the VDR data will be maintained for any future proceedings.

If the hard-disk has had to be removed from the VDR, once copies have been made and retained by the MAIB and the police, the original VDR hard-disk should be passed back to the owners of the vessel from which it was taken. Again, the fact that the original will then be re-used in no way damages the evidential trail as it will have been copied for MAIB and, police use, and will be retained on the MAIB hard-drive during the course of the investigation. Where appropriate, the MAIB will provide the police with a statement that the copy of the VDR data is a true copy. This statement could also provide an analysis of the functioning of the machine.

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## **6. LIAISON WITH THE CORONER**

### **6.1 Principle**

The Coroner will require a report on the police investigation. The Coroner may also make contact with the MAIB to discuss the MAIB investigation process and its progress.

### **6.2 Background**

A Coroner is required to inquire into all circumstances of a sudden, violent or unnatural death, which includes marine fatalities. The holding of a technical inquiry will however not preclude the holding of a Fatal Accident Inquiry whether or not a report of the inquiry has been published.

#### **6.2.1 The Role of the Coroner**

When a death occurs and is reported to the coroner, the body falls under the coroner's jurisdiction until released to relatives for funeral purposes. It is the coroner's responsibility to decide whether a post mortem examination and other tests are necessary, and arrange for these to take place. This usually occurs within a day or two of the death being reported, but may take longer. At the conclusion of an investigation, the coroner is under a statutory duty to send a certificate to the registrar of deaths, giving the details of the conclusion of the inquest (*Section 11(7), Coroners Act 1988*). This enables the death(s) to be registered.

### **6.3 Effective Liaison during an Investigation**

The parties signed up to this MOU are the MAIB and ACPO. On signing this MOU, ACPO will recommend and advise the police forces of England and Wales of the operating principles herein. Nothing in this MOU is intended to preclude or inhibit HM Coroner from effectively discharging their legal duties.

In any case involving fatality, it should be expected that the Coroner will require a report on the police investigation. The Coroner may also make contact with the MAIB to discuss the MAIB investigation process and its progress.

### **6.4 The Use of MAIB Inspectors as Expert Witnesses**

Where there has been an investigation, the normal function of an inspector at a Coroner's inquest or fatal accident inquiry is to support the MAIB report of an investigation. In cases where there has been a preliminary examination or administrative enquiry but no investigation, an inspector will not be able to act as the Coroner's expert witness.

Even so, the MAIB may still offer advice to Coroners on issues arising from the preliminary examination, and also on suitable sources of expertise available to them. In particular, during the course of a preliminary examination, a number of safety issues might be identified which the Coroner may wish to take forward during the course of his/her enquiries before the inquest or fatal accident inquiry. These will normally be outlined in a letter from the Chief Inspector of Marine Accidents.

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## **7. FAMILY LIAISON**

### **7.1 Principle**

The police Family Liaison Officer (FLO) will where possible assist and facilitate liaison between the MAIB LI and the deceased's family.

### **7.2 Notifying the Next of Kin**

Where a marine accident has led to a fatality, the responsibility for notifying the next of kin (defined as the closest relative of a deceased person) usually falls to the police. There are occasions when others, such as ordained ministers, staff of a fishermen's or seafarers' mission, medical professionals, employers, company representatives, or relatives, will often break the news first.

The MAIB attaches the greatest importance to keeping the next of kin informed about the progress of an investigation. Next of kin are welcome to talk to those conducting the investigation, to learn of its progress. Wherever

possible, arrangements will be made to provide the close family and appropriate individuals with a private brief about the accident before the report is made publicly available.

Further information about the work of the MAIB with the next of kin can be found in the handout; *“Fatal Marine Accidents – Information for Relatives”*, a copy of which can be found at Annex D of this Memorandum.

### **7.3 The Police Family Liaison Officer (FLO)**

The MAIB values its role in liaising with the families of those involved in marine accidents very highly, but it in no way impacts on the role of the police family liaison officer (FLO) or any bereavement counsellor. The role of the police FLO is to establish and maintain links of communication between the SIO and the family/relatives of homicide victims. The work of the FLO includes:

- consulting with the SIO or deputy to establish parameters of role during an investigation
  - establishing links and lines of communication with the victim’s family and relatives, gathering information from the family/relatives, and arranging for formal identification of the deceased
  - providing support for a victim’s family/relatives, advising on police and court procedures, and referring family/relatives to support agencies
  - updating the victim’s family/relatives regularly in relation to the progress of the investigation and any subsequent legal proceedings
  - issuing the Home Office pack *‘Information for Families of Homicide Victims’* if appropriate
  - facilitating liaison between MAIB LI, the victim's next of kin, and the Victim Information and Advice Network.
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## **8. MAJOR ACCIDENT RESPONSE**

### **8.1 Principles**

- The MAIB IIC will make himself known to the SIO and police on scene at the earliest possible opportunity.
- The MAIB IIC must be included in all aspects of incident progress and should be involved in any relevant briefing sessions.
- The MAIB IIC will, in consultation with the police agree:
  - access to the accident scene;
  - access to witnesses; and
  - access to evidence and VDR equipment.
- The principles outlined in this MOU should be maintained. Where ad hoc procedures are required, they should be mutually agreed by the IIC and SIO.

## **8.2 MAIB procedure**

A major marine accident, possibly with a significant loss of life and far reaching political consequences, will require the mobilisation of more than the usual on-call team to provide the staff required to cope with the scale of the accident. In practical terms, this is likely to mean a team of at least four will be immediately deployed. In addition, the IIC of that team may also be deployed. The IIC will also be responsible for making a judgement on any need for additional inspectors, specialists, and technical support. Whilst the IIC will be responsible for the conduct and control of the investigation, the Chief Inspector of Marine Accidents may also deploy to the accident scene, possibly accompanying a government Minister. At MAIB headquarters, an investigation support cell will be set-up to support the on-scene investigation team as requested by the IIC.

A greater police response would also be anticipated, albeit still under command of an SIO.

### ***8.2.1 Working with the Police***

A thorough investigation into the causes and circumstances of a major accident is clearly a very urgent requirement. Therefore, the procedures for collaboration and information exchange between the MAIB and the investigating police force outlined in this MOU must be adhered to when responding to a major accident.

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## **9. TIMING OF MAIB PUBLICATIONS**

### **9.1 Introduction**

The culmination of a full MAIB investigation is the production of a report normally published around seven months after the date of the accident.

A report is only produced following a full investigation. No report will be written if the enquiry remains a preliminary examination. In general, the publication of the MAIB report will be well in advance of any criminal prosecution. However, there will be occasions when its publication overlaps the beginning of a criminal prosecution, or it is published shortly before an impending trial.

The Chief Inspector decides when to publish an MAIB report, and it is for the Chief Inspector to judge where the balance of public interest lies. The main question is whether the importance of the report's recommendations, particularly with regard to the safety of the general public, outweighs any potential prejudicial impact. In taking this decision, the Chief Inspector will bear in mind the statutory obligation to make reports publicly available in the shortest time.

This power is recognised by the CPS, who will contact the MAIB whenever they intend to proceed with a prosecution before the publication of a report on an accident. This notification should describe the basis for the planned prosecution.

## **9.2 Legal Position**

Whilst the purpose of an MAIB report is not to apportion liability, it may contain sensitive information. Indeed, under the *Merchant Shipping (Accident Reporting and Investigation) Regulations*, the Chief Inspector undertakes to serve notice to any person or organisation that might be affected by the report.

Further, an MAIB report is not admissible in legal proceedings under the Regulations:

13(9) If any part of the report or analysis therein is based on information obtained pursuant to an inspector's powers under sections 259 or 267(8) of the Act, the report shall be inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a Court or tribunal, having regard to the factors mentioned in regulation 12(5)(b) or (c), determines otherwise.

The Crown Prosecution Service have agreed that they should inform the relevant AIB describing the basis of the prosecution if they are considering a prosecution.

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## **10. PRINCIPLES STATED IN THIS MOU**

The overriding principle of this Memorandum of Understanding is that:

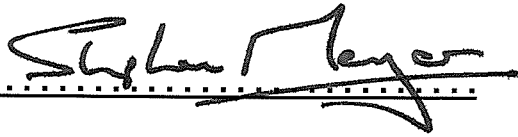
**An MAIB investigation and a Police investigation can proceed in parallel, with maximum co-operation at all times.**

The following principles are also stated within this Memorandum of Understanding. As far as possible, these principles should be adhered to at all times.

- A technical investigation is entirely independent from a police inquiry, but both can proceed in parallel.
- The public interest requires that safety considerations are of paramount importance.

- The investigating police force will contact the MAIB to notify them of a marine accident.
- There should be early contact between the SIO and IIC where a number of key principles of the investigation can be discussed.
- There should be early contact and close cooperation throughout the investigation, both on and off site.
- Where possible, there should be an exchange of factual information as both forms of investigation proceed.
- The MAIB investigating team shall have primacy of interview of any person involved or connected to an accident.
- An evidential trail must always be agreed, and the integrity of any evidence maintained, specifically:
  - Any VDR data on any vessel either indirectly or directly involved in a marine accident must be preserved by the first authority on the scene, and preparation made for its safe retrieval by the MAIB.
  - Any wreckage or vessel involved in a marine accident should be guarded and protected, and should be left undisturbed until the arrival of an MAIB inspector.
  - The MAIB is normally content to take photographs or photocopies of most written evidence such as logbooks.
  - The MAIB will retain technical evidence, and will maintain the evidential trail. Where the MAIB no longer requires the technical evidence, it will be passed to the Police for retention if necessary.
  - The MAIB will retain a copy of any data retrieved from VDR on vessels involved or connected to an accident. A certified copy will be passed to the Police on request, and the original VDR hard-disk will be passed back to the owners of the vessel from which it was taken.
- Where required, the MAIB IIC or LI can meet the Coroner's Officer to discuss the investigation process.
- An inspector will act as an "Expert witness" at a Coroner's inquest only to support the MAIB report of an investigation.
- The FLO will where possible assist and facilitate liaison between the MAIB LI and the deceased's family.
- Where ad hoc procedures are required at any time, they should be mutually agreed by the IIC and SIO.
- The CPS will liaise with MAIB prior to any prosecution.

On behalf of MAIB

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On behalf of ACPO

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Dated: 27 March 2006

## **MAIB TYPES OF INVESTIGATION**

### **A.1 Introduction**

The MAIB conducts three stages of investigation into marine accidents. At all stages, the MAIB will seek to answer four main questions:

- What happened?
- How did it happen?
- Why did it happen?
- What can be done to prevent it happening again?

### **A.2 The Administrative Enquiry**

After receiving notification of an accident, the MAIB will take a decision on what level of response is required. In some cases, the ship's owner's or officer's own investigation will be sufficient. In this situation the MAIB may conduct an administrative enquiry by correspondence and telephone to seek further details on the accident.

### **A.3 The Preliminary Examination**

The Preliminary Examination (PE) is the first stage of a full investigation. Its purpose is to identify the causes and circumstances of an accident to see if it meets the criteria required to warrant further investigation culminating in a publicly available report.

If it is decided as a result of the PE that the criteria have not been met, the MAIB will not conduct an investigation and all involved parties will be notified. The preliminary examination may still result in valuable safety lessons and recommendations, which will be addressed to those best able to implement them. The lessons learned may also be promulgated through the MAIB Safety Digest, whose articles provide a short, anonymous synopsis of an accident and lessons learned.

### **A.4 The Full Investigation**

A preliminary examination may show that a full investigation is necessary to establish the root causes of an accident. As with a preliminary examination, the inspector will continue to gather evidence and to interview witnesses or, if there has been a fatality, the next of kin. The inspector will go into as much detail as is possible and necessary to be able to produce a full report with safety recommendations. In general, it takes seven months to complete an investigation and write a report.

## **ACCIDENTS, MAJOR/SERIOUS INJURIES, AND HAZARDOUS INCIDENTS**

### **B.1 Introduction**

The definitions that the MAIB uses to classify types of incident and accident and different types of injury follow. The definitions used can be found in full in the *Merchant Shipping (Accident Reporting and Investigation) Regulations 2005*.

### **B.2 An Accident**

An accident is any occurrence on board a ship or involving a ship that results in personal injury, damage or loss. Accidents include loss of life or major injury to any person on board, or when a person is lost from a ship; the actual or presumed loss of a ship; her abandonment; or groundings, collisions, or material damage involving a ship. An occurrence resulting in significant harm to the environment also qualifies as an accident.

The collapse of lifting gear, an unintended movement of cargo or ballast sufficient to cause a list, and a loss of cargo overboard, or a snagging of fishing gear which results in the vessel heeling to a dangerous angle are accidents. In these cases, the occurrence must have caused serious injury or damage to the health of any person.

It is the duty of every master, skipper, and owner to examine any accident occurring to, or on board, their ship.

### **B.3 Major and Serious Injuries**

A major injury includes any fracture to, or loss of, a limb, loss of sight, or any other injury requiring resuscitation, leading to hypothermia, or admittance to a medical facility for more than 24 hours.

A serious injury is an injury, other than a major injury, when the injured person is incapacitated for more than three consecutive days, excluding the day of the accident.

### **B.4 Hazardous Incident**

A hazardous incident is when an accident nearly occurs in connection with the operation of a ship. In other words, it is what is often known as a “near miss”.

## FATAL MARINE ACCIDENTS: INFORMATION FOR RELATIVES

Any accident at sea or in harbour involving loss of life results in pain and suffering. The survivors, the families and the community endure grief, loss and confusion. They will have many questions, and will want to know "what happened?" and "why?"

Whenever a marine accident occurs it seems as if many official bodies converge on the scene to find out what happened. The police, government officials, lawyers, insurance assessors and marine surveyors will all be asking similar questions, albeit from different perspectives. This often appears confusing to families and friends.

This leaflet explains how and when marine accidents are investigated in the United Kingdom and in UK registered vessels. It also attempts to answer many common questions.

### THE MARINE ACCIDENT INVESTIGATION BRANCH

The United Kingdom Marine Accident Investigation Branch (MAIB) is based in Southampton and is an independent part of the Department for Transport. The MAIB investigates all types of marine accidents, both to ships and to people on board them. The sole objective of any MAIB investigation is the prevention of future marine accidents through the ascertainment of the causes and circumstances of an accident.

The MAIB does not apportion blame or liability. The MAIB is **not** a regulatory or prosecuting authority and cannot enforce its recommendations.

**The MAIB attaches the greatest importance to keeping the next of kin informed about the known facts of an investigation. They are, therefore, always welcome to talk to those conducting the investigation at any time, to learn of its progress. Whenever possible, arrangements will be made to provide the close family with a private brief about the accident, before the report is made publicly available.**

### WHEN AN ACCIDENT OCCURS

When there has been an accident, the owner, along with the master or skipper of the vessel is required to report it to the MAIB as quickly as possible.

The authorities make every effort to inform families about an accident before they hear of it on the radio or television but, with the speed of modern communications, this is not always possible.

The actual responsibility for notifying the next of kin of any deceased will usually fall to the police, but others, such as ordained ministers, staff of a fishermen's or seafarers' mission, doctors or close relatives, will often break the news first.

Following the receipt of a report of an accident, the Chief Inspector of Marine Accidents will use likely future safety issues as the basis for deciding which of the following courses of action to pursue:

1. Not to investigate in any way
2. To conduct an administrative enquiry
3. To make a preliminary examination
4. To complete a full investigation.

Once the decision has been made to investigate, one or more MAIB inspectors will be appointed. They are highly qualified and are drawn from the nautical, marine engineering, naval architecture, and fishing disciplines. All are highly trained and competent to investigate marine accidents of any nature. An administrative staff deals with records, data analysis and publications, and provides general support.

If a vessel is lost at sea, the MAIB's task is to find out why. If the wreck is found, an underwater survey of it may be undertaken. In exceptional cases, the decision may be taken to raise it. The Inspector involved will endeavour to inform the next of kin before the intentions are made public.

Sometimes, missing or sunken vessels prove impossible to find.

The MAIB is not responsible for recovering bodies, or for the marking, raising or removal of the wreck.

### **THE ADMINISTRATIVE ENQUIRY**

In some cases the ship's owner's or officers' own investigation will be sufficient. However, the MAIB may conduct an administrative enquiry by correspondence and telephone to seek further details on any accident and the Regulations require owners, masters and other relevant people or organisations to provide any such information when requested.

### **THE PRELIMINARY EXAMINATION**

The preliminary examination is the first stage of a full investigation. Its purpose is to identify the causes and circumstances of an accident to see if it meets the criteria required to warrant further investigation culminating in a publicly available report.

If it is decided as a result of the PE that the criteria have not been met, the MAIB will not continue an investigation. This decision will normally be made within two weeks of the accident, and all involved parties will be notified.

### **THE FULL INVESTIGATION**

All accident investigations seek answers to four basic questions:

- what happened?
- how did it happen?
- why did it happen?
- what can be done to prevent it happening again?

Once a report of an accident has been received and the decision to investigate taken, the inspectors will start to collect evidence. No two investigations are ever the same, and the process may take different forms. Inspectors will usually wish to see logbooks, charts and other documents. They will invariably interview those who may be able to shed light on what happened and are likely to take photographs and examine computer records. If the vessel contains a 'black box', the data will be removed and examined.

Sometimes the inspector needs to talk to the next of kin to learn about the background of a victim, or to look at professional documents or certificates which might be kept at home. This will never be easy for either side, but the inspector will always contact the family before visiting. Such meetings also allow the next of kin to meet the inspector personally and question him about the handling and progress of the investigation.

In very general terms, it takes about seven months to a year to complete an investigation and write a report. At first sight this might seem a long time, but it may be necessary to interview a wide range of individuals, crosscheck evidence, examine suspect equipment and consult with technical experts. Often the true cause of an accident turns out to be very different from the convenient solution identified by people who are not accident investigators in the immediate aftermath of a tragedy.

### **THE INVESTIGATION REPORT**

All MAIB investigation reports are produced in-house, and are made available, free of charge, to anyone who asks. The final report can also be read and downloaded from the MAIB's website.

Because reports may contain something likely to adversely affect someone's reputation, the Chief Inspector is required by law to send a draft to those concerned, so they can comment on it before it is finalised. This consultation process can take as long as two months.

The next of kin of anyone who has died in a marine accident will be sent a copy of the final report unless they indicate otherwise.

MAIB accident reports can also be presented at coroner's inquests and fatal accident inquiries.

Brief summaries of accident reports, including those that have not been fully investigated, may be included in the MAIB's Safety Digest, which is published three times a year.

One of the tragedies of accidents at sea is that in some cases the exact cause will never be known. In such circumstances, the MAIB may still conclude that valuable lessons can be learned, and will make recommendations accordingly.

### **CONCLUSION**

The MAIB's staff is acutely aware of the distress caused by the death of a close relation in a marine accident, and assures all next of kin that any investigation will be as thorough and as quick as possible.

#### **HELP AND ADVICE**

The following organisations can offer advice and support to next of kin:

- ◆ Royal National Mission to Deep Sea Fishermen - Tel: 020 7487 5101
- ◆ Mission to Seafarers - Tel: 020 7248 5202
- ◆ Shipwreck Mariners Society - Tel: 01243 787761
- ◆ Stella Maris - Tel: 01375 845641
- ◆ British and International Sailors' Society - Tel: 023 8033 7333
- ◆ Mersey Mission to Seamen - Tel: 0151 920 3253
- ◆ Cruse Bereavement Care - Tel: 0870 167 1677

For further information about the MAIB or for information about specific accidents, contact the MAIB at the address below:

Marine Accident Investigation Branch  
Mountbatten House  
Grosvenor Square  
Southampton  
SO15 2JU

Telephone: 023 8039 5500  
Fax: 023 8023 2459  
e-mail: [maib@dft.gsi.gov.uk](mailto:maib@dft.gsi.gov.uk)

Information is also available by visiting the MAIB website home page at:  
**[www.maib.gov.uk](http://www.maib.gov.uk)**

**MARINE ACCIDENT PASSENGER QUESTIONNAIRE**

The Marine Accident Investigation Branch (MAIB), based in Southampton, is responsible for investigating accidents aboard UK-registered ships anywhere in the world, and to foreign flagged-ships in UK territorial waters. Its aim is to make travelling by sea safer by thorough investigation, gathering information from crew and passengers. Following the accident in which you have recently been involved, we would be very grateful if you could answer as many of the following questions as possible.

<b>Personal Details</b>	
Full name:	
Address:	
Telephone (home):	
Telephone (work/other):	
Occupation:	
Age:	
Gender:	Male / Female
<b>General Details</b>	
How many people were travelling with you?	
What were their names and relationship to you?	
What was your port of embarkation?	
Where were you when the accident happened? (Cabin/seat number or general area of ship)	
How were you travelling?	Foot passenger / bus / lorry / car
<b>Description of event</b>	
How and when did you realise something was wrong?	
Please give a brief account of what you saw and heard.	
Were you kept informed about what was happening?	
<b>Leaving the Vessel</b>	
Did you hear any announcements made by the crew?	YES / NO
If so, were they clear?	YES / NO
Were you able to follow the instructions?	YES / NO

Were any of the following illuminated:	Cabin lights / Emergency exit lights
How did you leave the vessel?	
Did you encounter any difficulties?	
<b>Injuries</b>	
Please describe any injuries you suffered and how sustained.	
Were you hospitalised or incapacitated for more than 3 days?	YES / NO
<b>Fire</b>	
Please describe any fire or smoke.	
<b>General comments</b>	
Is there anything else you feel would help our investigation?	_____

Thank you for helping with our investigation. Please return this questionnaire using the reply-paid envelope supplied or by addressing an envelope to:

**MAIB, Mountbatten House, Grosvenor Square, Southampton, SO15 2JU**

If you have any questions, or any issues you wish to discuss, please write to us at the above address, or contact us by:

Telephone: 023 8039 5500

Fax: 023 8023 2459

E-mail: [maib@dft.gsi.gov.uk](mailto:maib@dft.gsi.gov.uk)

More information can be found at [www.maib.gov.uk](http://www.maib.gov.uk)

## **FATAL MARINE ACCIDENTS: INFORMATION FOR CORONERS AND PROCURATORS FISCAL**

This leaflet explains how fatal marine accidents are investigated in the United Kingdom and when they occur on board UK registered vessels. It also attempts to answer many common questions.

Ship's Name  
Date of Accident  
Principal Inspector  
Lead Inspector

### **THE MARINE ACCIDENT INVESTIGATION BRANCH**

The United Kingdom Marine Accident Investigation Branch (MAIB) is based in Southampton and is an independent part of the Department for Transport. The MAIB investigates all types of marine accidents, both to ships and to people on board them. The sole objective of any MAIB investigation is the prevention of future marine accidents through the ascertainment of the causes and circumstances of an accident.

The MAIB does not apportion blame or liability. The MAIB is not a regulatory or prosecuting authority and cannot enforce its recommendations.

The MAIB's responsibility covers the investigation of accidents to or on all UK registered vessels anywhere in the world, and to all vessels if they are within twelve miles of the UK coast (UK territorial waters), including inland waterways.

The Branch is not responsible for recovering bodies, or for the marking, raising or removal of a wreck.

The MAIB is not involved in the identification of bodies if they are recovered from the sea, nor in their return to their families.

Sadly, after some accidents bodies are never recovered. In these cases the Maritime and Coastguard Agency may conduct a death inquiry.

### **THE MAIB'S AUTHORITY**

The authority for the MAIB to investigate marine accidents originates from the Merchant Shipping Act 1995, which consolidated previous Merchant Shipping Acts dating back to the Principal Act of 1894.

The current statutory instrument which defines the procedures to be followed in the investigation of marine accidents, and the powers of Inspectors of Marine Accidents is the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005.

### **WHEN AN ACCIDENT OCCURS**

When there has been an accident, the owner, along with the master or skipper of the vessel are required to report it to the MAIB. Skippers of non-commercially operated pleasure craft do not have to notify the MAIB, but may do so if they wish.

Following the receipt of a report of an accident, the Chief Inspector of Marine Accidents will use likely future safety issues as the basis for deciding which of the following courses of action to pursue:

- not to investigate in any way,
- to conduct an administrative enquiry,
- to make a preliminary examination,
- to complete a full investigation.

Once the decision has been taken to investigate, one or more MAIB inspectors will be appointed. They are highly qualified and are drawn from the nautical, marine engineering, naval architecture, and fishing disciplines. All are highly trained and competent to investigate marine accidents of any nature. An administrative staff deals with records, data analysis and publications, and provides general support.

### **THE ADMINISTRATIVE ENQUIRY**

In some cases the ship's owner's or officers' own investigation will be sufficient. However, the MAIB may conduct an administrative enquiry by correspondence and telephone to seek further details on any accident. The Regulations require owners, masters and other relevant people or organisations to provide any such information when requested.

### **THE PRELIMINARY EXAMINATION**

An MAIB preliminary examination (PE) identifies the causes and circumstances of an accident to see if it meets the criteria required to warrant further investigation which will culminate in a publicly available report.

If it is decided as a result of the PE that the criteria have not been met, the MAIB will not continue an investigation. This decision will normally be made within two weeks of the accident, and all involved parties will be notified.

Nevertheless, during the course of a PE, a number of safety issues might be identified which the coroner or procurator fiscal may wish to take forward during the course of his/her enquiries before the inquest or fatal accident inquiry. They will be outlined in a letter from the Chief Inspector.

The normal function of an inspector at a coroner's inquest or fatal accident inquiry is to support the MAIB report of an investigation. In cases where there has been a preliminary examination but no investigation, an inspector will not be able to act as the coroner's or procurator fiscal's expert witness. However, the MAIB may offer advice to coroners and procurators fiscal on the issues arising from the PE, and also on suitable sources of expertise available to them.

### **THE FULL INVESTIGATION**

All accident investigations seek answers to four basic questions:

- what happened?
- how did it happen?
- why did it happen?
- what can be done to prevent it happening again?

Once a report of an accident has been received and the decision to conduct a PE or to investigate taken, the inspectors will start to collect evidence. No two investigations are ever the same, and the process may take different forms.

In very general terms, it takes about seven months to a year to complete an investigation and publish the report. At first sight this might seem a long time, but it may be necessary to interview a wide range of individuals, crosscheck evidence, examine equipment, consult with technical experts, and then process the report (see below). Nevertheless, an MAIB investigation report must be made publicly available in the shortest time possible.

### **THE INVESTIGATION REPORT**

The report will highlight the safety deficiencies, state the lessons learned and make recommendations to prevent similar accidents happening again. All MAIB investigation reports are produced in-house, and are publicly available, free of charge. The final report can also be read and downloaded from the MAIB's website.

The chief inspector is required by law to send a consultation report to those whose reputation might be adversely affected by it, so they can comment on it before it is made publicly available. The coroner or procurator fiscal concerned with the case will be sent a copy of the consultation report on request.

The consultation process can take as long as two months.

The final report is sent to those who were consulted, the next of kin, the Secretary of State for Transport, and the coroner or procurator fiscal.

One of the tragedies of accidents at sea is that in some cases the exact cause will never be known. In such circumstances, the MAIB may still conclude that valuable lessons can be learned, and will make recommendations accordingly.

### **CONCLUSION**

The MAIB's staff is acutely aware of the distress caused by a fatal marine accident, and assures coroners, procurators fiscal and all next of kin that any investigation will be as thorough and as quick as possible.

For further information about the MAIB or for information about specific accidents, contact the MAIB at the address below:

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e-mail: [maib@dft.gsi.gov.uk](mailto:maib@dft.gsi.gov.uk)

Information is also available by visiting the MAIB website home page at:  
[www.maib.gov.uk](http://www.maib.gov.uk)  
Jan 2003

### INFORMATION FOR WITNESSES FOLLOWING A MARINE ACCIDENT

Any accident at sea or in harbour may be investigated or examined by the Marine Accident Investigation Branch.

Whenever a marine accident occurs it can seem as if many official bodies converge simultaneously on the scene to find out what happened. The police, government officials, lawyers, insurance assessors and marine surveyors will all be asking similar questions, albeit from different perspectives. This often appears confusing to witnesses.

This leaflet explains how and when marine accidents are investigated in the United Kingdom and in UK registered vessels. It also outlines the obligations and rights which witnesses have during and after an interview with MAIB Inspectors.

#### **The Marine Accident Investigation Branch**

The Marine Accident Investigation Branch (MAIB) is based in Southampton and is an independent part of the Department for Transport. The MAIB investigates all types of marine accidents, both to ships and to people on board them. The sole objective of any MAIB investigation is the prevention of future accidents through the ascertainment of the causes and circumstances of an accident.

The MAIB does not apportion blame or liability, and it is **not** a regulatory or prosecuting authority.

The MAIB fulfils its purpose by examining incidents, investigating those with wider implications for safety at sea, and publishing the reports of its investigations. Both examinations and investigations may lead to the MAIB making safety recommendations to relevant people or organisations. In the past these have included the Maritime and Coastguard Agency (MCA), the classification societies, owners/operators and others. Before publication, the reports are sent out to anyone whose reputation may be adversely affected to give them the opportunity to correct any factual inaccuracies in the draft report.

MAIB Inspectors have legal powers under the Merchant Shipping Act 1995 and subordinate legislation which include the right to interview and require answers from anyone they consider able to give information relevant to the examination or investigation.

This information is kept in confidence within the MAIB and can only be released if a Court orders it; declarations may be released with the witness' written permission.

#### **We do not prosecute**

##### **Being Interviewed**

When, as a witness to an accident or incident, you are being interviewed by MAIB Inspectors you must answer the questions posed. If you refuse to do so, you are committing an offence under the Merchant Shipping Act.

This interview is solely between you and the Inspectors. However, you may nominate one other person to be present during the interview. This person can be anyone known to you and he or she may advise you on any point but must not prevent you from giving a direct answer to the Inspectors.

It is important that you think about your own interests when deciding on what person, if any, you would like to have with you during the interview. Sometimes, representatives of the vessel's owner or insurer might have very different interests from yours. Witnesses will often be questioned on their experiences in working for a company and will be required to answer candidly. If you feel that the presence of your employer's or any other organisation's representative might inhibit you in any way, you should tell the Inspector who has the power to exclude any person from the interview. Likewise, if the inspector has good reason to believe that your nominated representative is hindering the progress of an investigation, they will exclude that person from the interview. You will then be given the option to nominate another representative. An answer given by you to MAIB Inspectors cannot be used in evidence against you in any proceedings, unless you make a false statement or sign a declaration which is false.

If, during the course of an interview, you have any hesitation in answering the Inspector's questions because of others present, you are likewise encouraged to bring this to the attention of the Inspector who will ask the other person to leave during that part of the interview.

#### **We do not enforce**

**Declarations**

The Inspectors might take a declaration from you. A declaration is a confidential document, which may include a description of your qualifications and background, and your recollection and personal opinion of the incident being examined or investigated. Declarations are only released outside the MAIB if a Court orders it or with your written consent. Once your declaration has been taken, you will be given the choice of either reading it over yourself or having it read to you by an Inspector, before you sign it. You will, of course, be given a copy to retain.

**Recorded Interviews**

Wherever possible, you will be given the option of having the interview recorded, in addition to, or instead of, making a declaration.

We encourage the use of recordings as it allows an Inspector to progress the interview faster because fewer notes need to be taken. Recordings of interviews are not normally transcribed but, subsequently, are referred to by the Inspector in the same way as notes taken during interviews. It is not therefore possible to obtain a copy of a recording of your interview. Any recordings taken are confidential, and are not released outside the MAIB unless a Court orders it.

**We do not apportion blame or liability**

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