



Guidelines for the Maritime Expert Witness

Second edition

Guidelines for the Maritime Expert Witness

Second edition

Published by The Nautical Institute

200B Lambeth Road, London SE1 7JY, UK

Tel: +44 (0)20 7928 1351 Fax: +44 (0)20 7401 2817 Web: www.nautinst.org

First published 2006; second edition © 2022 The Nautical Institute

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form, by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher, except for quotation of brief passages in reviews.

Although great care has been taken with the writing of the book and the production of the volume, neither The Nautical Institute nor the authors can accept any responsibility for errors and omissions or their consequences.

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

Publisher: Bridget Hogan

Technical Editor: Captain John Noble FNI

Cover image: Shutterstock

Book and cover design: Phil McAllister Design

Printed and bound in the UK by Cambrian Printers

ISBN 978 1 906915 90 2

Acknowledgements

Maran Tankers Management

Maran Dry Management

Thenamaris

Columbia Shipmanagement

Chandris Hellas

Poseidon Navigation Services

Thomas Gunn MNI

Captain Deirdre Lane FNI

Captain Laura Pinasco AFNI

Captain Konstantinos Geomelos AFNI

Captain Ivo Jutrovic AFNI

Dr Andy Norris FNI FRIN

Brian McKenna FNI

Numerous watchkeeping officers on vessels I have assessed over the last four years

The book review team

Foreword



by **Sir Julian Flaux PC QC**
Chancellor of the High Court

Some years ago, when I was at the Bar, I used to act as counsel in a large number of maritime arbitrations, nearly all of which involved calling and cross-examining maritime expert witnesses. Captain John Noble was an expert whom I encountered on a regular basis. He was a model expert, balanced and fair and never tempted outside his area of expertise. This was in contrast to some experts at that time who were prepared to express opinions on all sorts of issues way beyond their own expertise, including telling the arbitrators what the result of the case should be!

For the present book, John Noble has drawn on his own immense experience and has also brought together contributors from across the spectrum of maritime arbitration and litigation to provide, from different perspectives, guidance as to the giving of expert evidence.

The book provides a great deal of useful practical advice and emphasises some of the most important aspects of expert evidence, at least from a judge's or arbitrator's perspective. These include that expert reports should be clearly and cogently written, with objective analysis; that the expert is independent from his or her appointor and is an expert not an advocate; that the expert should not stray beyond his or her field of expertise; that expert evidence from the witness box should be given in a dispassionate and non-confrontational manner; and that limiting expert evidence at the trial or hearing to what is in issue is critical, hence the importance of the experts' meeting and the joint memorandum.

This book will provide invaluable assistance and advice to those who are new to the task of giving expert evidence but is also a timely reminder to seasoned hands as to best practice.

Contents

Foreword by Sir Julian Flaux	iv
Introduction by John Noble.....	1
Civil Procedure Rules Part 35	4
Chapter 1 Maritime expert witness – typical chronology of events by David Pockett.....	5
Chapter 2 Training to be an expert witness by Mark Solon.....	13
Chapter 3 A hypothetical case study by Nicholas Haslam	17
Chapter 4 Transition from expert to arbitrator by Keith Hart.....	23
Chapter 5 Experts and marine lawyers by Jack Hatcher	31
Chapter 6 The barrister's approach by Sara Masters and Michael Collett	37
Chapter 7 The expert's role in maritime arbitration by Charles Baker	45
Chapter 8 The mediator by Jonathan Lux.....	49
Chapter 9 Expert witness evidence in court – the view from the bench by Sir Nigel Teare ..	55
Index	59
Contributors and peer reviewers	63



Introduction

By John Noble

Many readers of this volume will have read *Guidelines for Collecting Maritime Evidence* (GCME) Volumes 1 and 2. This book, *Guidelines for the Maritime Expert Witness*, serves to take the dispute resolution process to a conclusion, where court, arbitration or mediation hearings take place as the final step.

The Nautical Institute has been most fortunate in acquiring input from a range of experienced contributors who offer advice and commentary on the role and purpose of expert witnesses in the dispute resolution processes. This volume will be read by mariners and others who may be contemplating a career in the dispute resolution fields; equally, many readers will have an interest in developing their wider knowledge in maritime matters.

I will resist including my anecdotal input as much as possible; mariners are well known for 'swinging the lamp' and diverting readers' attention from the purpose of this book would not add anything salient!

General commentary

The earlier GCME volumes I mentioned achieved a wide readership throughout the maritime orbit. This volume is somewhat specialised with quality input from mariners who have developed as expert witnesses through to practising solicitors, barristers, mediators arbitrators and a retired judge. Inevitably there is some duplication in their various texts and this is no bad thing as this serves to demonstrate to the reader the importance of a point. The requirement where an expert has a duty to the court, arbitration or other dispute resolution panel cannot be overemphasised.

Who becomes an expert? This question is central. Clearly an individual who offers themselves as an expert must be able to demonstrate credibility. Indeed, many are thrust into the field almost by accident when a prospective client needing expert advice approaches an individual seeking in-depth assistance on a disputed issue.

The expression 'horses for courses' is a clear pointer when considering the most appropriate individual to assist in a disputed matter. The issue of who appoints an expert is dealt with in a number of the following chapters. Many, including myself, fell into the dispute resolution market by chance, often through a third-party recommendation.

Not too long ago, an individual would become an expert often by similar chance; knowing the right people in a lawyer's office, an underwriting syndicate, or a P&I club. Experience and in-depth knowledge of a matter in dispute is a basic requirement. An

Guidelines for the Maritime Expert Witness

instructing solicitor with the nominated barrister will want to be sure that you have the required expertise and are likely to test the extent of your experience and expertise. This may be a challenge, but it is worth bearing in mind that if the dispute ends up in live litigation, the opposing council will want to challenge the depth of your expertise in what is sometimes referred to as 'character and expertise assassination'!

A key to being a good expert witness is preparation. Readers who have sat professional oral examinations will be only too aware that an unprepared candidate is doomed to fail. Being an expert in the witness box can be a daunting experience, similar to sitting an oral exam. Increasingly, clients will need to be satisfied that not only has their expert the required expertise, but also holds a good groundwork in the legal processes and some form of formal training may be a pre-requisite.

This edition is primarily based on the English legal system simply because its dispute resolution process in maritime matters is highly advanced. Many other jurisdictions base their own jurisprudence on the English legal system.

Who can become an expert?

By reading the chapters in this book, it will become clear that becoming an expert depends on knowledge, independence and integrity. Three well respected maritime experts have contributed valuable chapters; ignore them at your peril!

There are some fields where expertise is gained as a result of conducting on-site activities: typically in unsafe port cases. Other experts may have specialist scientific knowledge. One thing is certain: if an expert does end up giving evidence in a trial or arbitration, the cross-examining counsel will want to test the validity of the expert's knowledge in respect of the matter in dispute.

One contributor has highlighted the role of the expert and training of expert witnesses by comparing on, one hand, a ship sailing with officers and crew who have not received any training with, on the other hand, sailing with a truly competent crew. Just imagine the likely consequences of sailing through the confined waters of the Dover Strait or off Singapore in heavy rain or fog with an insufficiently trained crew.

The legal profession is well represented too in the following chapters. A marine solicitor, two practising senior barristers, an arbitrator, a respected mediator and a retired senior judge have all added valuable contributions to help demonstrate where expert evidence fits in to resolution of maritime disputes.

The experts' view

Am I really an expert? This is a question individuals may ask of themselves, especially when preparing a report or getting ready for a hearing. As farming commentators would

say, “the answer lies in the soil”. Expertise is built up over years of hands-on experience. Self-confidence is a major positive factor; over-confidence can lead to a long downward spiral. When giving evidence or working with the lawyers, never assume an individual has knowledge of the subject you are giving evidence on. While on most occasions the expert has the lead, sometimes a cross-examining barrister will have specialist knowledge. Anecdotally, I remember one senior arbitrator telling me he was the most qualified person in the room. He was a qualified marine engineer and naval architect as well as an experienced barrister. I recommend any expert to do the pre-hearing homework to avoid being caught out!

The chapters that follow offer a good insight into the role of an expert witness throughout a dispute resolution process.

Civil Procedure Rules Part 35

Throughout this book there are references to various parts of the Civil Procedure Rules (CPR) published by the UK Ministry of Justice. As an appointed expert, you will be required to understand them and be fully compliant. The full rules can be found on the UK Ministry of Justice website.

PART 35 – EXPERTS AND ASSESSORS – Civil Procedure Rules ([justice.gov.uk](https://www.justice.gov.uk))

These rules cover a range of advice, from what constitutes expert witness evidence to duty to the court, the court's powers and practical matters such as report writing. Part 35 questions can have a significant impact on litigation, so it is important that experts have a clear understanding of the context of the rules in the legal framework.

Evidence from experts will assist courts in making decisions around an area outside of the expertise of its members.