

All recordings of interviews are protected under UK law, and will not be released outside the MAIB to anyone, unless so ordered by a UK court. Copies are not provided to witnesses, but a witness can request the opportunity to review the recording of their interview when they receive a consultation copy of the investigation report; usually about 4 months after the start of the investigation.

In addition to the audio/video recording, an inspector might require a witness to sign a written declaration that summarises the information given during the interview. The declaration may include a description of the witness's qualifications and background, and their recollection and personal opinion of the accident being assessed or investigated. Once the declaration has been taken, the witness will be given the choice of either reading it or having it read to them by an inspector before they sign it.

As with recordings of interviews, declarations are protected from release. The MAIB will not reveal that the witness has made a declaration, and declarations will not be released outside the MAIB unless a court orders it. The witness, or if they choose, their legal representative, will be provided with a copy of the declaration to retain. The witness may pass a copy of their declaration on to a third party as they see fit, but the MAIB cannot do this for them. Being present during an interview as the witness's nominee does not entitle you to a copy of this document.

As the witness's nominated person, you may take notes on the witness's behalf during the interview. However, all information disclosed by a witness during an interview is done solely for the purpose of the MAIB's safety investigation, it is treated in confidence, and it **may not be disclosed** to any third party by a nominee without the consent of the witness.

Data Protection

The MAIB carries out its work under the provisions of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012. These Regulations, and Sections 259, 260 and 267 of the Merchant Shipping Act 1995 under which the Regulations were made, allow the MAIB to obtain any information that is necessary to carry out its investigation.

The MAIB's power to process personal data is compliant with the provisions of Article 6 1. (e) of the General Data Protection Regulation (GDPR) whereby "processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller". This is explained in more detail in Section 8 of the Data Protection Act 2018.

The MAIB uses the personal information described above for the purposes of the efficient conduct of its investigations. This information is protected from release by section 259(12) of the Merchant Shipping Act 1995 and the provisions of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 Regulation 13.

To read more on how GDPR affects the way we use and store your data go to: <https://www.gov.uk/government/organisations/marine-accident-investigation-branch/about/personal-information-charter>

Help and advice

For further information about the MAIB or for information about specific accidents, contact us:

Marine Accident Investigation Branch
First Floor, Spring Place
105 Commercial Road
Southampton
SO15 1GH
United Kingdom

Phone: +44 (0)23 8039 5500
Email: iso@maib.gov.uk
Website: www.gov.uk/maib



INFORMATION FOR PERSONS

NOMINATED TO ACCOMPANY A

WITNESS DURING INTERVIEW

Any marine accident occurring within UK territorial waters, or to UK vessels anywhere in the world, may be investigated by the Marine Accident Investigation Branch (MAIB).

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 outlines the obligations and rights which persons nominated to accompany witnesses have during and after an interview with MAIB inspectors.

Marine Accident Investigation Branch

The 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 to determine the causes and circumstances of an accident in order that a recurrence can be prevented.

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

The MAIB fulfils its purpose by assessing accidents and incidents, investigating those with wider implications for safety at sea, and publishing the reports of its investigations. Both assessments 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, harbour authorities and others.

The MAIB conducts interviews in order to better understand what happened, how it happened, and why it happened, as part of its investigation into an accident. This can mean interviewing people with only indirect links to an accident, as well as those actually involved or who saw what occurred. However, for the sake of simplicity, all interviewees are known as 'witnesses'.

All MAIB interviews are conducted using the powers provided in The Merchant Shipping Act 1995, s.259 and subordinate legislation. This legislation gives inspectors the powers to require an individual to attend an interview, and requires the person being interviewed to answer the inspectors' questions truthfully. Refusal to do so is an offence under The Merchant Shipping Act.

In order to protect MAIB's witnesses:

- ▶ No truthful information provided to the MAIB during an interview can be used to incriminate the witness (or his or her spouse) in a court¹ of law;
- ▶ All information obtained during an interview is kept in confidence within the MAIB and can be released only if a court orders it; and
- ▶ The MAIB is required not to divulge the names of the witnesses it has interviewed.

¹ 'Court' means the High Court in England, Wales and Northern Ireland, and the Court of Session in Scotland.

Considerations before agreeing to accompany a witness during an interview

The interview is solely between the witness and the inspector. However, the witness may nominate another person to be present to support them during the interview. This person can be anyone known to the witness, provided they are not a witness themselves.

As the nominated person, you can advise the witness on any point, and take notes for them if they wish. You must not prevent the witness from giving, or advise them not to give a direct answer to any question posed by the inspectors, nor may you represent the interests of a third party during the interview.

The interests of the vessel's owner/operator or insurer may be very different from those of the witness. If you agree to act as a nominated person for a witness, it is essential that you explain to the witness whether or not you represent the interests of any other concerned parties. In the event of any obvious conflict of interest, you should refuse to act as the witness's nominated person. Should any conflict of interest become apparent during the interview, you should interrupt the interview and bring this to the attention of the inspector. It will then usually be appropriate to make alternative arrangements for the witness to be accompanied.

Representatives of the company or its insurer who have been present during an MAIB witness interview should also be aware that a conflict of interest might become apparent at a later stage of the investigation. When such a conflict is identified, it should be declared to the lead inspector and, if necessary, appropriate action taken to protect the witness's testimony.

Witnesses will often be questioned on their experiences in working for a company, and will be required to answer candidly. If you feel that your presence is likely to inhibit the witness in any way you must refuse to be present during the interview.

Exclusion from interview

Witnesses are encouraged to carefully consider their own interests when nominating someone to be present during the interview. To this end, witnesses may, and are encouraged to ask the inspectors to exclude or excuse anyone they wish from the interview, or part of it. They need not give any reason for this request and no inference may be taken from it.

The inspector, with the agreement of the Chief Inspector, has the power to exclude from an interview a nominated representative if there is good reason to believe that the person's presence is hindering the progress of an investigation. In this situation, the witness will have the option to nominate a different representative, to whom the same rules will apply. An inspector will not exclude a professional legal advisor who is acting solely on behalf of the witness. However, the MAIB will report any apparent professional misconduct by a nominee to their relevant supervising body, where such conduct undermines or prejudices an investigation.

Records of interviews and declarations

When interviewing within UK jurisdiction, MAIB inspectors will electronically record interviews. It is MAIB policy that these are the only audio/video recordings allowed in order to protect the integrity of the investigation. Outside of UK jurisdiction, MAIB inspectors will request the witness's approval to record the interview.