

Gard's general instructions for cargo damage/loss surveys

These instructions are primarily aimed at cases where surveyors are appointed to investigate cargo damage/loss etc on behalf of a shipowner member of Gard (the appointed surveyor). However, certain aspects will logically apply to cases where cargo surveyors are appointed on behalf of a Gard charterer member.

Cargo interests' access to the vessel, crew, documents.

If cargo interests/their surveyors wish to gain access to the vessel to investigate cargo damage/loss and instructions cannot be obtained from the Club, the master may need assistance from the appointed surveyor in agreeing reasonable terms of access for cargo interests'/their surveyors' investigation. The appointed surveyor should accompany cargo interests'/their surveyors during attendance onboard. In very general terms, access for cargo interests'/their surveyors should not go beyond a survey of the cargo loss/damage, ie to establish the nature and extent of damage/loss. Without prior approval, access should not be given to the survey of non-cargo spaces, to ship's structure/fittings/equipment, to any crew member for comment/opinion/statement or to any ship documents. If cargo interests/their surveyors demand such access they should set out their requests in writing and the appointed surveyor should send that request to the Club as soon as practicable. The master should be advised that, in the appointed surveyor's absence, the master should avoid permitting access to cargo interests/their surveyors for investigation purposes until guidance has been obtained from the Club.

Evidence and cargo sampling

It goes without saying that no evidence is to be destroyed, tampered with or disposed of. Photographs can be extremely valuable evidence so the appointed surveyor should make sure that these are accompanied by a proper description of the subject matter, location, date and time.

If cargo sampling is required and cargo interests/their surveyors wish to take samples, the appointed surveyor should ensure that these are taken on a joint basis and are representative of the cargo in the space being sampled. The samples should be taken with proper equipment, using the proper procedure (or best available) and should be properly signed, sealed and labeled (including ship name & location, cargo & sample description, eg whether sound or damaged sample, sample device, sample source, date and time and seal number). Sufficient samples should be taken so that each party has their own (identical) sample. A cargo sample list should be drawn up and signed by all the parties taking samples. The appointed surveyor should seek the Club's instructions on the storage/retention of samples and in the meantime should not dispose of any samples taken.

If cargo sample analysis is proposed or requested by cargo interests/their surveyors, the appointed surveyor should ask for their proposals (preferably in writing) on the tests, test facility and test methods to be used. If the appointed surveyor does not agree with any of these proposals or with the reliability of the testing facility the Club should be advised immediately. If the appointed surveyor has his own proposals with regard to sample analysis, these should be reported to the Club before communicating these to cargo interests/their surveyors. Analysis results should not be agreed without the Club's approval.

Survey findings & mitigation

In general terms, the appointed surveyor should not share his survey findings with cargo interests/their surveyors or agree to cargo interests/their surveyors' findings unless approved by the Club. In very general terms, this includes nature, cause & extent of damage/loss, sound values, depreciations, losses, costs/expenses. This does not mean however that all relevant interests/surveyors should not work together to identify cargo that is damaged. It may therefore be communicated to cargo interests/their surveyors that the appointed surveyor is prepared to recommend a joint determination of the nature and extent of damage.

If cargo interests/their surveyors propose a course of action to mitigate a loss/damage, the appointed surveyor may agree to that course of action if urgent action is necessary and instructions cannot be obtained from the Club. If the appointed surveyor has his own proposals to mitigate loss/damage these may be shared with cargo interests/their surveyors on an entirely without prejudice basis. If the appointed surveyor is uncertain that a course of mitigation is the correct one, this should be reported to the Club before agreeing such action.

Protests

If the master receives a protest from cargo interests/their surveyors regarding damage/loss to cargo he may need the appointed surveyor's assistance in how to handle such a protest. The appointed surveyor may feel that the master should not sign the protest, but if signature cannot be avoided the master should be advised to sign "signed without prejudice, without any admission and for receipt only". If the appointed surveyor considers it necessary or desirable for the master to issue his own protest, the Club should preferably be provided with a draft for approval (unless the protest must be issued urgently and the Club's instructions cannot be obtained, in which case, protests should be restricted to factual observations, not opinions or views). The instructions in this paragraph apply equally to protests received by and issued by the appointed surveyor.

Reporting

With regard to reporting, the appointed surveyor should pay close attention to any instructions given by the Club. The Club may, for example, require the appointed surveyor to provide a 'verbal only' report or to only report in writing to an appointed lawyer. Unless otherwise instructed, the appointed surveyor should only provide written reports in draft form and marked as such. In very general terms, the formal draft report (if one is requested and subject to any specific instructions) should include the information listed below (to the extent it is available). It is expected that the appointed surveyor's preliminary draft report will contain less (but sufficient) detail as is available at the time of reporting.

- Terms of reference
- Vessel description/particulars
- Consignment details (carriage contract details, cargo details/specifications)
- Cargo history – load port(s), voyage, discharge port(s)
- Survey date/place/attendees
- Survey findings regarding nature, extent and value of damage/loss including :-
 - How nature/extent of damage/loss has been determined, including details of any sampling & analysis
 - Mitigation of loss/damage, sound/salved/depreciated values, tender details, extra expenses etc
 - Whether other parties in attendance had the same/similar findings to the appointed surveyor and if not how they differ
- Photographic record
- Appendix of documents

Important Note

Where these instructions refer to contact with the Club, and a Gard correspondent is involved in the handling of the case, contact should first be made through the correspondent unless urgent instructions are needed in which case the Club can be contacted directly. If, notwithstanding these instructions, the appointed surveyor is requested by the master and/or member to follow a certain course of action, and for which Club instructions cannot be obtained in sufficient time, the appointed surveyor should act as requested, if in agreement, and on a 'without prejudice to insurers' basis.

Further reference material

Gard Guidance to Masters, Gard Guidance to Correspondents, relevant Gard News articles and any cargo specific survey instructions issued by Gard.