

The complaint

Mr M complains that Society of Lloyd's ("SoL") has unfairly settled a claim under his all risks marine insurance policy.

Any reference to Mr M or SoL includes any respective agents or representatives.

What happened

The background of this complaint is well known to all parties, so I've summarised events.

- Mr M holds an all risks SoL insurance policy for his vessel.
- In August 2021 damage was caused to the vessel following the failure of a raw water intake hose. This led to a loss of power, flooding and damage to the two engines. The Starboard engine was flooded, and the spray of the split hose caused water to enter the Port engine. Both engines stopped, and the vessel impacted a marina pontoon and subsequently ran aground, damaging the hull.
- Mr M sought to claim on his SoL policy. SoL considered this and agreed to pay for damage to the hull, but it declined the cost of the two engines. It relied on two exclusions within the policy that said:
 - a) loss or damage arising through or consequent upon loss of use, wear and tear and natural decay"*And
 - "f) electrical or mechanical breakdown, failure or lack of performance unless caused by fire or explosion or the insured Vessel or Craft being sunk, stranded or coming into contact with any external substance (other than water) or being immersed as a result of heavy weather"*
- It said the hose in question failed due to wear and tear so the damage to the engines had arisen from this, and the engine damage amounted to mechanical breakdown from resultant water ingress that wasn't caused by one of the listed items above.
- SoL also highlighted Mr M's obligations under the policy, which say:
 - "The Assured must act prudently and as if uninsured, at all times, to minimise loss and/or damage to the insured Vessel or Craft and to protect any recovery rights that are available. Failure by the Assured to act in accordance with these conditions may prejudice the claim being made under the Policy."*And
 - "The Assured must...take reasonable measures to safeguard or recover the insured Vessel or Craft, avoid or minimise any loss, damage or expense to the insured Vessel or Craft. Insurers will pay the costs of such measures provided that they are both reasonable and necessary"*
- It outlined the service history of the vessel, saying services were missed for 2018, 2020, and 2021. And that the invoices for the available services (2015, 2016, 2017 and 2019) showed the engine hoses hadn't been checked as they should've been –

which was also reflected in the photographs of the damage. It concluded the hoses had gone without inspection since 2015.

- Mr M complained, providing comments from two separate marine engineers who said the event could not have reasonably been foreseen. Mr M acknowledged age would've contributed towards what happened, but said the engineers comments supported that there was no way of knowing the damage was occurring. This was due to the damage occurring underneath the jubilee clip so would've been hidden from inspection. Mr M also said he had a full-service history and provided records of this between 2015 and 2020.
- Mr M highlighted that the vessel's manufacturer did not recommend a lifespan of hoses, only that they are checked at services. Mr M also said the photographs SoL relied on were taken some two and a half weeks after the incident and had been exposed to sea water which had led to their level of corrosion which hadn't previously been present. And Mr M provided details of the Port engine hose which was without damage, despite having the same maintenance and services as the Starboard one throughout its life.
- Mr M also said the engineers who serviced the vessel would only include costs related to the necessary works being completed, and shouldn't be taken as a statement of all works completed – which was even true of Company G who are the respective manufacturer's regional "centre".
- Since the incident, the vessel has now been repaired and Mr M is seeking £38,340.62 for these costs.
- Our Investigator looked into what happened and didn't uphold the complaint. He said it was clear the policy didn't cover loss or damage caused by wear and tear, and the damage in question appeared to be due to a hose failing due to wear and tear.
- The Investigator said it seemed the relevant maintenance schedule required hoses to be checked, and this simply hadn't happened. So, he felt it was reasonable for SoL to rely on this exclusion in the circumstances.
- SoL agreed, saying the part in question that failed has a life expectancy, so it was reasonable to expect Mr M to have known it would need replacing at some point. It gave the analogy of a cam belt on a motor vehicle, saying it is understood at some point the part will inevitably fail and the insurance wasn't designed to cover that.
- Mr M disagreed, he reiterated many of his concerns and said:
 - SoL had accepted the hull damage originated from an unbroken chain of events from the hose – so it wasn't clear why it declined the Port engine.
 - The annual services followed manufacturer's recommendations outlined in the Owner's manual. And these regular services show Mr M had met his obligation to have the vessel maintained.
 - SoL's surveyor had commented that the Owner's manual doesn't provide a recommended interval for changing hoses – only that they are checked, which is what the engineers had done at each service.
 - The policy specified "ordinary wear and tear" is excluded, and in this case the wear and tear were not visible generally, pre-trip or at service inspection.
 - If SoL required invoices to reference each and every check listed in the Owner's manual, this was not clear from its schedule.

The Investigator looked again but didn't change his mind. So, the complaint was passed to me for an Ombudsman's decision. I issued my provisional thoughts on 17 August 2022. I've

included an extract of these below.

“Mr M holds an all risks policy. This says:

*“An **All Risks** policy covers damage due to some fortuitous circumstance or casualty, that is to say, an event occurring by accident or chance. These words should not be understood to cover all damage howsoever caused. Such damage as is inevitable from ordinary wear and tear and inevitable depreciation is not covered within the **Policy**.”*

In this case, the facts of how the damage occurred isn't in dispute. And it seems all parties are in agreement the origin of the damage came from the failed hose, which most likely occurred due to wear and tear – at least as a contributing factor to its failure.

What is in dispute, is whether SoL has fairly and reasonably declined this claim in line with its policy terms. I'll consider these in turn.

Wear and tear

SoL has been clear that wear and tear isn't covered by its policy.

So, I need to ask if it is reasonable to have expected Mr M to have been aware of this damage occurring over time. In doing so, I'm going to consider the obligations Mr M has as a policyholder. Under “your obligations” it says:

“The insured Vessel or Craft must be maintained and kept in a seaworthy condition and all mandatory safety requirements and manufacturer's recommended practices as stated in the Owner's Manual, shall be complied with.”

Mr M has provided evidence of a full service history from 2015 until 2020.

SoL has said the invoices do not show the requirements set out in the Owner's manual were met. Specifically, the invoices do not comment on the checking of the hoses.

I've reviewed all of these carefully, and I'm not persuaded by SoL's comments here. I say this as the vessel has been serviced by a number of different Marine engineers across this time. The level of detail between the invoices differs between them, but I think it's fair to say none of these invoices provides a list of every single check or requirement outlined in the Owner's manual.

Using the comparison of a service for a motor vehicle, I would note the invoices provided from garages are usually generic, often with just the works completed and charged for listed.

I note that one of these Marine engineers who completed a service is specifically the manufacturer's appointed “centre” for a region in the UK and their website describes many years of working with this particular manufacturer's products and services. So, reviewing all of these circumstances, it appears to be that a number of well qualified and suitably experienced engineers have serviced Mr M's vessel since he's owned it. And while their invoices may not reflect every check within the Owner's manual, it seems most likely to me that these were still completed as part of the service as Mr M has said.

SoL has provided a photo of the damage which shows rust. Mr M has put forward that this part had rusted in the weeks that passed since the damage occurred due to its exposure to salt water following the incident. And he's pointed to the hose on the Port engine that is the same age and has had the same maintenance and servicing which is without damage or

rust. I think this is a plausible explanation in the circumstances and persuades me the damage most likely wasn't there prior to the incident.

Mr M has also provided commentary from two marine engineers. I've included extracts of their comments below. The first is from Company S:

"I can confirm that a visual inspection of the engines would not have been identified what was happening to the hose.

This is because the damage occurred 'under' the jubilee clip and would only have become apparent when the engine was running, i.e. when the hose had built up sufficient pressure (30psi) so that it 'bulged' out from under the jubilee clip, which resulted in water being sprayed around the engine bay. This can also be seen in the photographic evidence provided, in the pre and post removal of the jubilee clip.

Given the location of the split, I can't see how anyone, even an engineer let alone an owner, could have mitigated what happened. [Manufacturer] do not specify any time span or engine hours for replacing the hoses; only that they should be checked."

The second is from Company M:

"...I concur with the engineers view on the matter. It would have been impossible to project or mitigate against an incident like this. If the defect cannot be physically sighted then whether this be the owner, engineer or surveyor supposed to comment and take evasive action.

As highlighted in previous email chains and reports, the removal of jubilee clips is not part of [Manufacturer's] maintenance schedule.

In my opinion, this incident could not of been prevented. It is clear from the invoices that the vessel/engines are maintained in accordance with the manufacturers recommendations and therefore nothing else could have been done to prevent this."

I think these comments are persuasive, and further support that this issue wouldn't have been picked up within a service as there was no requirement to remove jubilee clips. And so even if I agreed with SoL that the services did not include the relevant checks outlined in the Owner's manual – which I don't – it seems this wouldn't have changed anything as the damage appears to be underneath the clip and not visible.

But in any event, I have to consider what Mr M knew at this point. And I think it's reasonable for him to have believed the vessel's engine was without issue if the services never picked up on any issues with the hose in question. After all, the engineers here are the experts, and I don't think it would be reasonable to place a greater onus on him (in these circumstances) to have checked this particular hose in more detail than the engineers who inspected it and serviced the engine.

SoL has put forward that the hose in question is akin to a cam belt, and therefore it would be common knowledge of a motorist that this part will fail over time so its breakdown is not fortuitous. But in my experience of dealing with motor insurance complaints, vehicle manufacturers often set recommended guidelines for replacement of timing belts. And they're usually part of a specified service at certain mileage and age. So, I'm not persuaded by SoL's analogy here as there's no evidence that the vessel hose had a particular lifespan, and I'm persuaded it was checked at each service.

For these reasons I think Mr M has demonstrated that he acted reasonably and prudently and took appropriate steps to maintain his vessel as he was required. While I acknowledge the damage to the hose may have occurred as a result of wear and tear, the subsequent

water damage wasn't an inevitable consequence of this. And I simply don't think it would be fair or reasonable in these circumstances for SoL to decline the claim on this basis.

Electrical or mechanical breakdown

The policy is clear that it will not cover an electrical or mechanical breakdown, failure or lack of performance unless this was caused by fire, explosion or if the vessel had been sunk, stranded or came into contact with any external substance (excluding water) or being immersed as a result of heavy weather.

The facts here show the hose failing led to water entering the Starboard engine, and spraying into the Port engine. So, on its face, I can understand why SoL has concluded this exclusion applies as put simply, water entered the engines which caused their failure.

But again, I have to determine what is fair and reasonable when considering SoL's decision.

So, I've thought about the intention of this exclusion. In its everyday use a boat or vessel is going to be in constant contact with water. And I think it's an understandable risk for the insurer to not want to cover as within its day to day usage of the boat, there's a potential high exposure to water. But the policy is clear that there are circumstances where it will cover damage caused by water in situations of the vessel sinking or being immersed due to heavy weather. That's understandable because of the fortuitous and one-off nature of the risk occurring.

In this instance, the water entered both of the engines as a direct result of the failing hose – which I'm satisfied for the reasons given above, was a one off and fortuitous event. And I think it would be reasonable in this instance to consider these circumstances to be directly consequential damage of the initial event beginning with the Starboard engine's hose.

Taking into account the above, and the wider intention of the policy which is designed to cover a "fortuitous circumstance or casualty" and one that "occurring by accident or chance", I think it would be both fair and reasonable for SoL to settle the claim for both of the engines in line with its remaining policy terms.

Hull

The hull damage to the vessel was accepted by SoL. While there's been some back and forth since over whether this should've been paid at all, SoL hasn't withdrawn this part of the claim. So, I see no need to comment on it any further."

I concluded that for these reasons I intended to uphold the complaint and direct Society of Lloyds to settle the claim in line with the remaining policy terms, adding 8% simple interest.

SoL disagreed, and in summary said:

- It said the "reports" I had relied upon had not been shared with it previously. The expert commentary was shared with SoL. It confirmed it had seen these but said Mr M had not commissioned a detailed survey and report to support his position so it questioned the weight placed on the commentary. And it said it might be reasonable to assume the authors of those comments had carried out the previous servicing, suggesting bias in their intention.
- It said its own independent expert said they do not agree there would have been no way of knowing the hose would fail from a visual inspection, and referred me to the Owner's manual which says the following checks should be completed every 200 hours or 12 months (whichever is soonest) - inspection of exhaust hose and cooling

water hoses, check hoses/pipes, unions, and hose clamps, check the condition of all rubber hoses, and re-tighten hose clamps

And that the jubilee clip that was undisturbed for a number of years was evidence the required checks weren't carried out.

- SoL reiterated concerns about the service documents and the detail within them.
- SoL stated the mechanical breakdown clause is a perils based clause which specifically lists the circumstances under which cover may / may not apply. And it said this is not a clause which should be interpreted to operate any wider than this and to do so is counter to how the insurance contract operates and the approach I suggested would remove the ability of an insurer to be specific as to the things they are and are not willing to cover. And the clause was there to protect SoL's exposure to exactly this type of loss and my proposed interpretation of this clause would effectively render it impossible to apply, which wasn't fair or reasonable.
- SoL also stated my proposed decision was counter to decisions made by many different insurers over time. And it felt if this matter went to court that a court would agree with its position on the how the clause should operate.

Mr M reviewed these comments and provided his own commentary in response:

- He had used qualified marine engineers to carry out around £25,000 of maintenance and servicing across a five year period so had done what he reasonable could've done to mitigate any loss.
- There was no rust around the jubilee clip or hose so it wasn't possible to determine any problem occurring.
- All expert commentary was previously shared with SoL and Mr M noted these had never been referred to as "reports" by either him or this Service.
- Any allegation of bias of the engineers could equally be attributed to the insurer's own position in denying liability.
- The insurer's surveyor had not been present when servicing the vessel so its assessment is retrospective and suggests the servicing engineers ignored degradation – which didn't make sense as its business model was to identify and charge for repair and replacing failing parts.
- Mr M said he was aware of the obligations outlined in the Owner's manual and reiterated there was no specified time on replacement of the hoses.
- Mr M said if servicing carried out by qualified marine engineers wasn't sufficient as proof a vessel was serviced and maintained, he questioned what would satisfy SoL.

I've received and considered the responses following my provisional decision and all timeframes set for further submissions has now passed.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm still upholding this complaint. I'll explain why.

- I take on board SoL's comments that the expert commentary Mr M has provided is not a report, and its comments regarding potential bias. And when considering this evidence previously and deciding what weight to place on this evidence, I had taken

these factors into account. And with those factors in mind, I want to be clear I haven't been given anything that persuades me the comments made were not an accurate reflection of the author's opinion. So, this hasn't changed my mind.

- I've taken into account SoL's comments regarding the Owner's manual. This is a document I had considered previously, and as I outlined in my provisional decision, the checks do not specify the removal of jubilee clips. I'm satisfied the photographic evidence supports there was most likely no rust around them prior to the incident, so it wouldn't be reasonable for Mr M to have been aware of this. And while I think it's most likely the services carried out the appropriate checks, it wouldn't have changed anything anyway as the damage was underneath the clip and not visible.
- In regards to the service documents provided, I have nothing to add on this topic beyond what I have said previously. I'm satisfied Mr M has had his vessel serviced by a number of well qualified and suitably experienced engineers and the service documentation is in line with what I'd expect to see – and I think it is unreasonable and impractical in the circumstances for SoL to expect the documentation to reflect every check and consideration taken into account when servicing the vessel.
- SoL has suggested my interpretation of the mechanical breakdown clause is wrong and would have industrywide ramifications.
- I want to be clear my decision is based on the specific circumstances of Mr M's complaint. And as I've outlined previously, I agree with SoL that the policy states it specifically excludes the mechanical breakdown of a vessel if it was caused by water. And I've explained why, taking into account the intention of this exclusion, I think it's understandable for an insurer to not want to cover water related risks to its electrics or mechanics within the day to day usage of a vessel.
- My role requires me to not only consider whether policy terms are applied accurately, but what is fair and reasonable in all the circumstances of this case. And here, the policy is clear that there are circumstances where it will cover damage caused by water in situations of the vessel sinking or being immersed due to heavy weather – which is understandable because of the fortuitous and one-off nature of the risk occurring. And here, the water entered both engines as a direct result of the sudden failing of the hose – which I'm satisfied was a one off and fortuitous event.
- So, taking everything into account, including the wider intention of the policy to cover a "fortuitous circumstance or casualty" and one that "occurring by accident or chance", I'm still satisfied in these particular circumstances it would be fair and reasonable for SoL to settle the claim for both of the engines in line with its remaining policy terms.
- SoL has commented about its prospects of success if this matter were considered by a court. When considering what's fair and reasonable in the circumstances of this complaint I have taken into account the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time, as required by my role.
- Albeit hypothetical at this point, it's possible a court may reach a conclusion as SoL believes. A court would focus on the interpretation of the contract of insurance, and while I have explained my thoughts on the relevant terms in this case, my remit is to consider what's fair and reasonable in all the circumstances. This is a wider approach than a court has. And I've detailed why, in the particular circumstances of Mr M's case, I consider it fair and reasonable for SoL to settle his claim.

My final decision

My final decision is I uphold this complaint, and I direct Society of Lloyd's to do the following.

- settle Mr M's claim in line with the remaining terms of the policy;
- pay 8% simple interest from the date Mr M paid for repairs until the date the settlement is paid.

If SoL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 November 2022.

Jack Baldry
Ombudsman