

The complaint

Mr H complains MS Amlin Insurance SE has unfairly declined a claim under his marine insurance policy.

Any reference to MS Amlin includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

- Mr H is the owner of a canal boat for which he has marine insurance. The policy is underwritten by MS Amlin.
- On 22 December 2022, Mr H's boat started taking in water to both the interior and engine compartment. A rescue service – who I'll refer to as C – towed his boat to a secure location to have the water pumped out and the damaged surveyed.
- Following a subsequent flooding a few days later, C reported the flooding could have been caused from two possible sources. The first being damaged plumbing caused by ice. The second being cabin roof rainwater entering the engine compartment due to "already inadequate drains being blocked".
- MS Amlin declined the claim saying the damage had occurred due to gradual deterioration as the drains were inadequate. It said the flooding wasn't sudden and unforeseen because Mr H was aware of the freezing weather conditions but didn't take preventative measures in respect of the plumbing. It said Mr H hadn't removed his boat from the water – even though a service in November said repairs were required – and so he'd not mitigated his losses. It added Mr H hadn't demonstrated the correct use of anti-freeze.
- Mr H disagreed he said: he couldn't have foreseen ice blocking the drainage channels; he'd topped up the anti-freeze correctly and kept the engine fired regularly; he hadn't been advised to remove his vessel from the water.
- Mr H remained unhappy and so brought a complaint to this Service. An Investigator considered it and upheld it. She was more persuaded the damage was a result of a sudden, one-off event caused by extreme weather conditions. And she wasn't satisfied the insurer had demonstrated Mr H had failed to take preventative measures regarding frost or freezing. So, she said MS Amlin should cover the claim subject to the remaining terms and conditions of the policy.
- MS Amlin disagreed and so, the complaint has been passed to me for an Ombudsman's decision.

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 agree with the outcome our Investigator reached and am upholding this complaint. I'll explain why.

- The crux of MS Amlin's argument is that the damage to Mr H's boat was due to gradual deterioration. It considers the vessel's most recent service report to support its position as repairs were recommended in it. It also considers Mr H to have not taken adequate measures to prevent damage being caused by frost or freezing temperatures.
- It's not in dispute that when Mr H's boat was serviced a month prior to the damage occurring, the engineer carrying out the service made recommendations for certain repairs to be completed which included: the bowman end cap being replaced as cracking was visible; wiring being moved from the isolator switch directly to the battery; replacing the glow plugs as starting was sluggish.
- So, whilst I accept repairs were recommended, I must keep in mind the engineer said the bowman end cap *wasn't* leaking, the bilge pump was fully operational, and it was only best practice that the glow plugs be replaced.
- But of particular note – and why I *don't* consider these recommendations to absolve MS Amlin of responsibility for covering the claim - are the technical director's comments from the company who carried out the service, which say: *"please note that none of these [repairs] required the boat to be lifted out of the water and none of them would have caused the boat to take on water."*
- So, I'm not satisfied there's a causative link between the repairs which were recommended during the service and the damage which occurred in December 2022. And as MS Amlin hasn't supplied expert evidence to the contrary, I'm not persuaded it can fairly rely on the gradual deterioration exclusion to decline Mr H's claim.
- I also don't consider it reasonable for the business to suggest Mr H hadn't taken reasonable steps to mitigate his loss by not removing his boat from the water. I say this because again, according to the servicing company's technical director, removing it from the water wasn't necessary. And MS Amlin hasn't provided persuasive evidence to explain why it was.
- I've also kept in mind that Mr H has said he regularly attended his boat – as he had to move it every two weeks - and had visited four days prior to the date of loss. He's explained he topped up the anti-freeze and ran the engine each time he visited. And I see no reason to not take what he's said in good faith.
- With regards to the weather conditions, reports show the temperature fell to below freezing around the time of loss. Given the plumbing was found to have been damaged by ice – and because I'm not persuaded the damage was because of gradual deterioration – I think it's more likely the damage occurred because of extreme weather conditions. And not because Mr H failed to take preventative measures in respect of frost and freezing.
- So, on balance, I'm not satisfied MS Amlin has demonstrated it can fairly rely on the

exclusions it has to decline Mr H's claim and it should, therefore, cover the claim subject to the remaining terms and conditions.

My final decision

My final decision is I uphold this complaint and direct MS Amlin Insurance SE to cover the claim subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 October 2023.

Nicola Beakhust
Ombudsman