

The complaint

Mr L has complained that MS Amlin Insurance SE ('MS Amlin') offered to pay less than the insured amount in settlement of his claim following fire damage to his motorboat under his marine insurance policy. For the avoidance of doubt, the term 'MS Amlin' includes reference to its agents and representatives for the purposes of this decision.

What happened

Mr L's motorboat unfortunately suffered catastrophic damage and total loss in November 2023 due to an accidental fire. Mr L had attempted to extinguish the fire; however, it ultimately partially sank during firefighting efforts by the fire service.

Mr L submitted his claim to MS Amlin, being his marine insurer at the relevant time. He said that MS Amlin initially told him that it couldn't find his policy and then stated that he had misrepresented material facts on inception of the policy. Mr L said that he had provided truthful information, and that the relevant section of the telephone call record wasn't supplied by his insurers. MS Amlin said that the telephone records showed that Mr L stated that the value of the boat was much higher than the purchase price. MS Amlin ultimately made an offer to settle the claim at the level of the purchase price, as it considered that Mr L had made a qualifying misrepresentation. As Mr L was unhappy about the level of offer, he referred his complaint to this service. He said that he was unhappy about certain delays caused by MS Amlin, including salvage delay and the consequences of this.

The relevant investigator upheld Mr L's claim, having considered the relevant legislation. She felt that, during the setting up of the policy, the consequences of not differentiating between value and purchase price hadn't been made clear by MS Amlin. She also noted that Mr L wasn't asked a direct question about the price paid for the relevant boat and was only asked about its value. If there was a qualifying careless misrepresentation, as the sum insured was a certain percentage greater than the purchase price, MS Amlin would have offered a policy but only if supported by an independent professional valuation. The investigator noted that MS Amlin's loss adjuster had stated that the sum insured wasn't significantly overstated but didn't give a specific value. She further noted that the policy wording stated that the amount the vessel had been insured for was the agreed value, unless the certificate had an endorsement to state market value, and it had no such endorsement.

The investigator concluded that whilst the value was more than Mr L paid for the boat, it was fair for MS Amlin to settle for the sum insured as it couldn't provide a specific valuation, together with interest from a month after the claim was raised until settlement paid. She noted that MS Amlin had been aware of Mr L's significant health issues, however also accepted that MS Amlin had been entitled to investigate the claim, and she couldn't say that it hadn't progressed the claim within a reasonable timeframe.

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.

The key issues for me to determine are whether certain legislation applies in this case and if so, whether MS Amlin acted in a fair and reasonable manner in declining to pay out the insured value of Mr L's destroyed motorboat. In summary, I can't say that it's acted in a fair and reasonable manner, and I'll explain why. In reaching this decision, I've also carefully considered the submissions of the parties as summarised below.

I turn firstly to Mr L's submissions in support of his complaint. He provided evidence that a telephone call with MS Amlin regarding insurance renewal in August 2023 was for a duration of 17 minutes and 45 seconds, whereas MS Amlin produced a recording of 14 minutes. Mr L was adamant that the price paid, and the value were discussed within the *'missing recordings.'* He added that MS Amlin *'increased the premiums and took the premiums for the insured amount...'* and that it was MS Amlin's own fault if it didn't ask for a valuation. He didn't consider that the implications of the discussions had been made clear to him.

Mr L described the difficulties he'd experienced in trying to register his claim and said that MS Amlin's agents initially denied the fact that he had a marine insurance policy and said it wasn't on its system. He said that this caused a considerable amount of distress and anxiety. He was then informed by MS Amlin that it had a legal right to cancel his policy as he had provided misleading information. He said that the higher insured amount was because he'd carried out all necessary works and that boats had increased significantly in value after Covid, so he couldn't replace his boat on a like-for-like basis for less than that value. He also referred to the boat being left half sunk for seven weeks so that his belongings couldn't be retrieved, and other valuables had been looted. Mr L said that MS Amlin's actions caused him a great deal of distress, at a time when he was suffering significant ill-health issues. He said he'd felt in despair at that point and felt badgered into accepting an offer made by MS Amlin, as he was told that it had a right to withdraw the offer.

I now turn to MS Amlin's submissions in response to Mr L's complaint. It said that during validation of the claim, it was highlighted to Mr L that the sum insured differed from the boat's purchase price. It said that at policy inception in 2022, it was told by Mr L that the price paid was much higher than the actual price. It then made a without prejudice offer to settle the claim for the lower purchase sum, as well as removal costs. It didn't dispute that there was a fire onboard Mr L's boat and noted that Mr L said that it was never his intention to be dishonest, however it suggested that he *'perhaps missed or overlooked the documents confirming the purchase price...'* As to the allegation made by Mr L about alleged tampering with telephone records, it said that it took such allegations very seriously and, having conducted an independent review of the claim, could see no evidence that vital information had been withheld or call recordings altered, but noted that the connection was lost.

MS Amlin said that the question regarding the purchase price was asked in 2022 and again in 2023 when Mr L telephoned to renew the policy. It said that the insurance documents were clear as to the information which Mr L had provided and the possible consequences of misrepresentation. For example, the statement of fact included a statement about the purchase price, and *'it was made clear that this information formed the basis of the quotation'* and asked Mr L to confirm that the information within the document was correct.

In summary, MS Amlin said that an insurance contract was based on utmost good faith, and that it was a policyholder's duty to take reasonable care not to make a misrepresentation *'when answering clear and specific questions about facts relevant to the proposed risk when buying or renewing an insurance policy.'* It considered that if the actual price paid and discrepancy had been referred to the underwriters, it was likely that MS Amlin would have declined to offer a policy to Mr L, or at the very least, would have asked for sight of a valuation. MS Amlin said that the offer of settlement had only been made as a gesture of goodwill, bearing in mind Mr L's health issues. It considered that its actions had been more

than fair, and its legal advice confirmed that the policy could have been voided, and the claim rejected given the misrepresentation.

It said that when asked to confirm the total purchase price as being the higher figure, Mr L had clearly answered 'yes'. He'd also confirmed that he'd elevated the price of the boat to be in line with the prices for similar boats on a like for like basis. MS Amlin concluded that Mr L made a misrepresentation at policy inception, whether deliberately or recklessly. It said that it would have had no knowledge of any previous insurance information from another company which may have set out the correct purchase price.

MS Amlin considered that, as well as misrepresentation at policy inception, there had been a failure to bring the error to its attention upon receipt of the policy documents which *'specifically set out the incorrect purchase price'*. It also stated that Mr L had breached his duty to provide fair and accurate information about the boat and had he *'been forthcoming with the true purchase price they would have insured it for no more than [the purchase price]'*. In view of the wording of the policy, it said that it could have rejected the claim in its entirety and paid nothing to Mr L, however it had recognised customer vulnerability had made a generous offer both for the hull loss and costs of removal and disposal. It said that an increased amount would result in 'unjust enrichment'.

MS Amlin disagreed that its advisor had assumed the purchase price of his own accord and provided a transcript of a relevant discussion which it said supported its contention. This included Mr L's answer 'yes' in response to the advisor's statement that the total purchase price of the craft and other items was the higher figure. It said that Mr L clearly stated at the inception of his policy in 2023 that the purchase price was the higher figure and that this was misleading. It also considered that Mr L would have known that the questions would affect the policy and took no steps to correct the misrepresentation. MS Amlin confirmed that by virtue of its underwriting criteria, it wouldn't have insured the boat for more than the purchase price without a professional valuation. It remained of the view that it had treated Mr L fairly.

Finally, MS Amlin didn't agree that it had unreasonably delayed the claim due to necessary investigations. It understood that Mr L had been able to retrieve some of his personal items, and that he didn't hold cover for such belongings.

I now turn to the reasons why I'm upholding Mr L's complaint. I appreciate that this is a large claim will have significant implications, however I must determine this complaint based on what is a fair and reasonable outcome in all the circumstances. The decision is based on the relevant legislation and on the relevant policy terms and conditions and how these apply to the specific facts and evidence in this case. Records of telephone conversations between MS Amlin's agents and Mr L are key in this case, and I've listened very carefully to these.

The starting point for my consideration of this case is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') which covers misrepresentation. It states that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer, and if the consumer fails to take care in giving or confirming information leading to a *'qualifying misrepresentation'*, the insurer then has certain potential remedies. For there to be a qualifying misrepresentation, the insurer must show that it would either have offered the policy on different terms or indeed that it wouldn't have offered the policy at all if the consumer hadn't made the misrepresentation. The insurer's remedy depends on whether any misrepresentation was deliberate, reckless, or careless. If deliberate or reckless, the policy can be treated as void and premiums may be withheld.

Under Section 5 of CIDRA, a misrepresentation is deliberate or reckless if the consumer *'knew that it was untrue or misleading or did not care whether or not it was untrue or misleading,'* and knew that this was a relevant issue to the insurer or didn't care whether or

not it was relevant to the insurer. It's presumed, unless the contrary is shown, that the consumer had the knowledge of a reasonable consumer, and *'that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.'* If a qualifying misrepresentation is deliberate or reckless, the insurer can avoid the policy and refuse all claims, and need not return any of the premiums paid, *'except to the extent (if any) that it would be unfair to the consumer to retain them.'* If the misrepresentation is careless however, then to avoid the policy, the insurer must show it wouldn't have offered the policy at all if it wasn't for the misrepresentation.

There is indeed an onus upon the customer to ensure that the responses which they provide to key questions are correct, true and accurate. However, the difficulty for MS Amlin in this case is that if the purchase price had been a key question for its organisation, it didn't spell this out. Mr L wouldn't have been aware of this fact due to its agent's handling of relevant telephone calls. Having listened carefully to the relevant calls, I consider that Mr L has answered questions carefully and candidly. There are two telephone calls, one in 2022 and the other on renewal in 2023, and in neither case is the boat's purchase price requested.

In the 2022 conversation, the call-handler asked Mr L to provide the *'present value'*. Mr L asked what the representative meant, and the representative repeated that he was asking for just the value, which Mr L provided and then added his tender. The representative went on to ask whether Mr L wanted cover for a number of additional items which Mr L declined. The representative then used different terminology to confirm the *'total purchase price'* to which Mr L responded *'yes, yes'*. Mr L then went on, in the same call, to insure a separate boat and the call-handler went through the same set of standard questions and comments. Mr L was again asked for the current value. Mr L said that he'd paid £10,000 for the boat, didn't know its current value but mentioned £5,000. The call-handler then gave Mr L the option to insure the boat for £10,000 or £5,000 and Mr L opted for the latter.

In the 2023 conversation, the policy was amended to record that the boat was being lifted out of the water for work to be carried out, and then to renew the policy. The call handler went through the previous responses provided by Mr L and repeated *'the value'* which Mr L had previously specified, and then used different terminology, being the *'purchase price'* to confirm the total figure. Mr L has provided evidence that this conversation was 17 minutes, 45 seconds long, whilst MS Amlin's representative has produced a record containing 14 minutes of dialogue only.

Having listened very carefully to the whole of the relevant telephone recordings, I'm satisfied that, regarding both the 2022 and 2023 telephone conversations, Mr L had responded to questions candidly. In the 2022 conversation he had asked for clarification of what was meant, but none was provided by the call-handler. Indeed, the call handler reiterated that he just required the figure for value. It's therefore unclear why the call handler then changed terminology in confirming the value as being the total purchase price. I consider that the customer could not be expected to have queried this change of terminology. On balance, I therefore consider that Mr L didn't make any careless misrepresentation at this stage and that his *'yes, yes'* response, was wholly understandable in all the circumstances. The call-handler script was unclear in this respect, and likely to cause confusion.

Likewise, on renewal in 2023 the call-handler re-stated previous answers given by Mr L as to the present value for the boat and tender but then, confusingly repeated the total figures using terminology which, though indistinct, appeared to refer to *'total purchase price'*. The fact that in 2022, in relation to a second boat, the call handler appeared to provide the option of noting the purchase price paid or the lower value, will have added to the confusion, and the impression that the insurer used the terms interchangeably. This will also have, not unreasonably, left the impression that the recording of the actual purchase price was not

critical and there was no reason to believe that failure to provide it would have potentially serious consequences.

If the information was critical, then it would have been fair and reasonable for the sales process to have made this crystal clear, and not to expect the customer to query or challenge the process. I don't consider that the questions and process employed by the representative were sufficiently clear and specific under CIDRA. If relevant, it should also have asked a direct question about how much Mr L paid for the boat, and if MS Amlin wasn't then content to provide insurance cover and to charge a premium for the higher value, then it should have stated its requirements at this stage, whether for a valuation report or anything else. As to the discrepancy noted by the parties regarding the length of the 2023 telephone call, I consider it likely that this was due to the representative having carried out the standard procedure of stopping the recording whilst Mr L's payment was taken over the phone.

I agree with MS Amlin to the extent that the insurance certificate produced to Mr L at renewal does specifically refer to the price paid as being the higher figure. It also makes it clear that it's important to check documents. It states *'The information you have supplied forms the basis of this legal contract between us. You must therefore ensure that all the information given is accurate and that no material facts have been withheld'*. However, in the light of the chronology of events as above, and the general lack of clarity in the sales process, I'm satisfied that, on reading the documents, Mr L wouldn't reasonably have been alerted to any potentially serious consequences of not querying or challenging the information as recorded.

Mr L could not have been expected to query or challenge the way in which MS Amlin recorded his candid responses, particularly as he had tried to seek clarification on 2022 and was told that he needed to provide *'just the value'*. It would have been reasonable to assume that this was simply the way in which MS Amlin chose to record information regarding values provided by the customer in good faith. In all the circumstances, I'm satisfied that Mr L made no qualifying misrepresentation, whether, careless, deliberate, or reckless, and that any mistake or confusion caused, was unfortunately due to the actions of MS Amlin's agents.

For the avoidance of doubt, even if it could be said that any failure of Mr L to query or challenge the paperwork amounted to a qualifying misrepresentation, I'm satisfied that no remedy could have been applied by MS Amlin to reduce the value of the settlement. MS Amlin's underwriting criteria show that if, as in this case, the sum insured was more than a certain percentage over the purchase price, then a quote would still be provided, subject to an independent professional valuation. However, due to the way in which the sales process was conducted on behalf of MS Amlin, no valuation was sought at the relevant time. It's notable however that in this case, MS Amlin's specialist loss adjuster had specifically stated that, after having carried out research into the comparative values of identical vessels, the insured value *'was probably not significantly overstated'* although he did recognise that the boat wasn't *'necessarily in prime condition.'*

In all the circumstances, I'm satisfied that the fair and reasonable outcome of this case is for MS Amlin to promptly settle Mr L's claim for the sum for which it insured Mr L's motorboat, together with interest from a month after the claim was raised until settlement payment.

I appreciate that the incident itself will have caused Mr L a huge amount of distress and inconvenience, and the insurance claims process itself will have added to this distress. However, I can't say that MS Amlin's lengthy and detailed investigation into a complex and significant claim was wholly unfair or unreasonable. In the circumstances, I agree with the investigator's view in this respect, and don't require MS Amlin to pay a further amount in compensation for any associated delays in MS Amlin settling the matter.

My final decision

For the reasons given above, I uphold Mr L's complaint and I require MS Amlin Insurance SE to do the following in response to his complaint:-

- Settle Mr L's claim for the insured amount in line with the relevant policy terms and conditions
- Pay interest on the settlement amount from a month after the claim was raised until the date of settlement, at 8% a year simple interest*

*If MS Amlin considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a certificate showing this 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 L to accept or reject my decision before 28 January 2025.

Claire Jones
Ombudsman