

The complaint

Mr H and Mrs W complain about Travelers Insurance Company Limited's ("TICL") handling of their claim under their marine insurance policy.

Mr H has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Mr H or Mrs W as "Mr H" throughout the decision.

TICL are the insurers of Mr H's policy. Part of this complaint concerns the actions of an agent. So any reference to TICL includes the actions of the agent.

What happened

The background to this complaint is well known to the parties, so I won't go into too much detail but will summarise the key points. Mr H made a claim in December 2023 following a lightning strike to his vessel, which he says occurred in May/June 2023. Throughout the claim, a number of reports were obtained by TICL and Mr H which commented on the cause of the damage. TICL then issued a 'reservation of rights' letter to Mr H which said the timings of the incident appeared unusual and not as expected with lightning strikes. They said they needed to establish what had happened to the vessel over the past 9 months so they could work out what the causes might have been and when they were likely to have happened. Mr H complained as he believed TICL had given conflicting information. He said, having previously accepted that a lightning strike did occur around the time Mr H claimed it did, and also confirming he could begin repairs, TICL were now claiming they had concerns about the timing of the incident.

The claims administrator responded and explained the elapsed time between the alleged date of event and the notification of loss had resulted in additional investigation and time. They referred to a report they'd commissioned and said, while this acknowledged lightning damage, it didn't specifically list all the areas of damage that Mr H was claiming had been damaged. They said they believed some of the damage may be down to electrolytic corrosion and gasses given off when overcharging batteries. The claims administrator stood by the position set out in the reservation of rights letter.

During our investigation, TICL issued a final response and said they agreed with the stance taken by the claims administrator. Later, TICL set out their final position in the claim and referred to findings made by an expert they'd appointed – who I'll refer to as company CT. They said company CT had reviewed all the reports Mr H had provided and the information that they were able to get from Mr H when they met with him during the inspection of the vessel.

TICL said, in summary, company CT stated that they'd seen no actual evidence of lightning strike damage in person or in reports. TICL said with any damage claim, there should be documentary evidence and physical evidence of damage, and both are lacking in this matter. TICL said the only evidence company CT had found of any high transient voltages had been the damage to the NMEA circuit board, and they recommended that settlement should only cover associated sensitive electronic equipment networked to the NMEA. So in settlement of

the repairs, and other items including some costs incurred by Mr H, they offered to settle the claim at £9,108.65.

Our investigator looked into things for Mr H. He upheld the complaint and recommended TICL settle the repairs and include reasonable costs for the works identified by one of the experts appointed by Mr H, reimburse Mr H's costs for the reports he commissioned together with 8% simple interest, and pay £500 compensation. Mr H and TICL disagreed so the matter has come to me for a 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've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. I think it's important to add, I won't be commenting on every event during the claim and complaint process, instead I have taken a broad approach to the overall service provided. I can see TICL issued their final response on 7 October 2024 but it's clear communication between the parties continued beyond this and was relevant to the issues addressed in the complaint response. So, I think it's fair in the circumstances for me to consider events up to the claim settlement offer made by TICL.

The first point I've considered here is whether I'm persuaded the damage was caused in the way Mr H has described. It's important for me to make clear, I'm not an expert in surveying a vessel or in the electronic components of a vessel, but there is extensive commentary on those points in the form of expert reports. So, that's what I've relied on here in deciding this complaint.

Mr H appointed an electrical contractor – who I'll refer to as company C. They set out their initial thoughts and recommendations based on what they'd seen and discussed with Mr H onboard his vessel. They said, *"Having been aboard the vessel. discussed and looked at the operation (or lack thereof) with numerous systems. The only viable cause of failure in my opinion is a strong emf such as by a nearby or direct lightning strike which can damage systems and disable or destroy them."* They also said, *"The vessel...shows to be kept to a high standard and viewing operations onboard shows to be well cared for and in pristine condition...In my opinion. in order to travel safely with confidence in the systems installed I recommend replacing all of the electronics including its wiring and any motors. windings or equipment effected."* In taking this report into account, there's an electrical expert, who has inspected the vessel, and supports Mr H's claim.

TICL appointed surveyors – who I'll refer to as company M. In their report, they said *"With the available evidence, we consider that the cause of loss is reasonably attributable to the introduction of high voltage into the vessels electrical and electronic systems."* The report concluded, *"The cause has been determined to be consistent with lightning damage and we have no reason to believe otherwise. The failures that have occurred have been independently observed and are considered to be consistent with high transient voltages caused by direct lightening within close proximity of the vessel."* In taking this report into account, there's a surveyor appointed by TICL, who has inspected the vessel, and supports Mr H's claim.

Mr H appointed a company of marine engineers – who I'll refer to as company N. They provided a report which referred to them going onboard to inspect the vessel and assess the work required to the generator and engine room. The report said, *"Following my inspection of the boat I can see that the damage caused to the generator was due to the fact the boat has been hit by lightning, causing damage to the internal workings of the generator which has led to a large amount of black soot being dispersed from the generator throughout the generator casing and then into the engine room/compartment."* The report says the generator is uneconomical to repair and will require replacing, and also says the engine room will require a lot of cleaning and some items such as the foam sound proofing and some hoses to be replaced as they can't be cleaned enough to remove the soot damage. In taking this report into account, there's a marine and mechanical expert, who has inspected the vessel, and supports Mr H's claim.

Mr H maintains the damage to his vessel was caused by a lightning strike in May/June 2023. There's no dispute Mr H didn't report this to TICL until December 2023 – some six months later. So, I do understand why TICL questioned this further. The information shows the claims administrator asked company M to clarify with Mr H why it took six months for the damage to become evident. Company M checked with Mr H and said to the claims administrator, *"We have inquired from the claimant about the delay in reporting the loss to the insurers. The claimant was not certain about the lightning damage when he first discovered the black coloured seacocks and the soot covered generator. According to the claimant he reported the loss to the insurers when he was certain that it was a lightning attack which caused the damage."* Further information shows Mr H explained that he was only able to determine this in December 2023 after he arranged for an engineer to come onboard to inspect the damage.

TICL then explained, from reading the circumstances of the loss in company M's report that the navigation equipment started to fail after Mr H left the destination where he says the lightning strike occurred and while travelling to another destination. They said they noted Mr H attempted to get his vessel repaired at two other destinations but was unable to do so. TICL said they'll therefore accept that the lightning strike did occur when Mr H claimed it did.

It appears the circumstances, as described by Mr H, were accepted by TICL and they paid for replacement Raymarine equipment and also authorised Mr H to arrange a rig inspection and also to order a replacement Genset. That said, it's clear from communication between the claims administrator and company M, and with TICL, there were still concerns about the claim circumstances with the claims administrator saying, *"The problem I have is that with lightning strikes, issues with electronics happen immediately, not 6 months later"*.

The claims administrator raised this concern with TICL and they said they don't necessarily agree that issues happen immediately with lightning strikes. They said, *"Our experience has been that whilst some electronics simply do not function following the strike others appear to do so only to malfunction later at sea. We tend to view equipment involved in a strike as being similar to outboards that have been submerged ie they may seem to be working but there is the possibility that they may fail when the owner needs them the most. To that end we have always been fairly generous in allowing assureds to replace equipment clearly showing some signs of lightning issues. Looking through your e-mail it seems that you are not doubting that the vessel suffered at least one lightning strike but feel that because of the length of time that issues keep emerging there may have been more than one strike."* This suggests even TICL didn't rule out the possibility of there being a lightning strike with damage becoming evident later.

The claims administrator then raised a number of causes which they believed accounted for the damage, this included wear and tear and age-related damage, lack of maintenance, and also electrolytic corrosion. Mr H then raised these points with company N and they said,

“Further to our conversation regarding electrolysis as a cause of the issues you are having with the generator/electronics/batteries and anything else electrical on the boat. I have visited the boat on a number of occasions to inspect the generator/engine to provide you with a quote, I haven’t seen any evidence of electrolysis anywhere on either the generator or the engine or any surrounding electrical or metal fittings or connections. There is no evidence of pitting on any metals or discolouring of any electrical connections that would be an obvious sign that was present or was a cause of the issues you are having throughout the boat. If electrolysis was a cause of any failure there would be obvious signs of this throughout the engine compartment. From what I have seen and taking in to account the number of electrical issues you have had and are still having, the only way this amount of damage can be caused is by a large lightning strike resulting in a huge spike through the boat. I have seen many yachts with similar issues that have been hit by lightning. I have seen many boats effected by electrolysis that have very different symptoms to your boat. Electrolysis wouldn’t cause the multiple failures you are having on the boat.”

Mr H then appointed another expert, a marine surveyor – who I’ll refer to as company B - to comment on the damage and also address the points made by the claims administrator. They also inspected the vessel and, in their report, described the incident as *“Electrical, electronic and mechanical damage caused by a voltage spike. Following extensive investigation, the apparent cause is consistent with an indirect lightning strike occurring at [destination where Mr H claimed the incident occurred].”* In a section headed ‘Notes regarding damage’ it said they inspected the vessel and it *“...sighted in excellent condition that reflects a high and strict maintenance regime well adhered to.”* This report went further and said, *“It is the surveyors opinion that such damage and consistency of failures throughout the vessels DC systems, can not be attributed to general wear and tear nor to lack of maintenance.”*

Then, to address the claims administrator’s concerns more specifically, Mr H appointed another expert – who I’ll refer to as company L – to prepare a corrosion survey report. This report says, *“Vessel is reported to have suffered an indirect lightning strike...”* Under a section headed ‘Visual observations during survey’ it says, *“The vessel is in great condition regardless of age...Vessel has been very well maintained with a very comprehensive maintenance history.”* In relation to any signs of internal corrosion, it says, *“Small amounts within the engine room and very minor localised corrosion on various components, which is deemed to be very minor...”* and in respect of external corrosion, it says, *“Rigging has some very minor corrosion concerns, deemed to be localised...”*

In a section headed ‘Immediate outcomes’, it says, *“At the time of testing was noted that there was some significant issues with respects to material damage / loss / discolouration caused by DC electrical influences. The multitude of DC damages and electrical influences and the inherent lack of AC power issues strongly suggest an indirect lightning strike that has caused a surge affecting components that cannot cope with reverse polarity of power (DC systems). The vessel is clearly showing an electrically induced spike / surge that has damaged many, if not most of the vessels DC electrical system.”* This report supports Mr H’s claim about the extent of the electrical damage and also about corrosion, wear and tear and age-related factors not being a cause of the damage.

Mr H also appointed a marine electrician – who I’ll refer to as company A. They carried out an inspection of the vessel and prepared reports which commented on the cause and extent of the damage and what components required repairing. There are a series of reports here prepared at various stages of the claim with detailed assessments of the damage to the vessel. I won’t go into too much detail here but will set out the key parts of the reports which are relevant to my findings. In relation to the cause of the damage, company A said, they’d inspected the vessel for electrical issues and, *“Upon inspection it is clear that the vessel has*

experienced an impulse transient voltage or multiple transient voltages of this type generated by a direct hit or being in the proximity of lightning. In this case we consider it to be the latter."

In emphasising the importance of ensuring all equipment is working, they said, *"This is an ocean going vessel with a small number of crew and therefore the reliability of equipment is paramount."* In addressing why the damage might not have been visible or evident sooner after the lightning strike in May/June 2023 they said, *"The damage to equipment, cabling and ancillaries can be immediate and components are blown up instantly or damage can be partial and the components will fail at an indeterminate period thereafter."* and *"Electrical systems become degraded by transient activity, damage can be immediate or partial and the components will fail at an indeterminate period thereafter."* Company A also said, *"It is also likely the majority of other electrical equipment onboard will either be damaged or partially affected and will prematurely fail at some future point in time."* In relation to the extent of the damage, company A said, *"I am advising that the majority electrical equipment onboard will either be damaged or partially affected and will prematurely fail at some future point in time. The ongoing failure we have witnessed while testing has confirmed this."*

There are six reports here – all of which support Mr H's claim. They are from companies with broadly similar areas of expertise, and I haven't seen any evidence which suggests any of these aren't suitable experts. I acknowledge TICL have concerns about the circumstances of Mr H's claim and also raise the possibility of the damage being attributable to different causes. But, when taking all the findings from the reports together, they provide what I believe is compelling evidence that the damage was likely caused by a lightning strike, it's likely for damage to become visible and evident some time after a lightning strike, and that factors such as corrosion and wear and tear are unlikely to have been causes for the damage here.

TICL also say, prior to company L's inspection, Mr H and Mrs W lived onboard the vessel for five months using many of the vessel's electrical equipment and probably causing further damage. They also say Mr H's decision to do the repairs in piecemeal fashion has prejudiced their position. I do acknowledge the points made by TICL, but I haven't seen any evidence which persuades me this was more likely the cause of the damage as opposed to what the various expert reports show. I can see TICL still have doubts about whether the damage caused to the vessel followed a lightning strike in May/June 2023 and they refer to lightning data which they say show lightning strikes on other dates and in other areas. While I have carefully considered all points made by TICL, I'm still more persuaded by the expert reports I've mentioned here. And, what I think is important here, is that the reports don't say that lightning strikes always cause instantaneous damage to the electronics which is immediately visible and evident.

That said, it's clear TICL have also appointed experts, so it's important that I consider those findings too. As I've already mentioned, TICL appointed company M – and their findings support Mr H's claim. TICL also appointed a marine surveyor – who I'll refer to as company CM. They said, the fact that Mr H didn't report the incident at the time of the lightning strike indicates it happened later than claimed. They said, in their experience with lightning strike damage, it's immediately obvious when a vessel has suffered as the navigational equipment is often the first affected and it's visible with equipment not working. Company CM provided their opinion on the areas of damage being claimed by Mr H and said it's possible there were issues, possibly age related or due to being laid up for almost three and a half years, and that no evidence had been presented to support lightning damage.

Company CM also commented on other expert reports. In relation to company C's report, company CM said this wasn't independent and lacked credibility, and the report simply

repeated Mr H's claims. In relation to company A's reports, company CM said this did list the faults they'd found presumably by switch testing, but this wasn't an independent verification of cause. They said the majority of the report appears to be a copy and pasted lesson in lightning strike damage characteristics. In relation to company M's report, company CM said this was done to a poor standard, it contained numerous inaccuracies, confirmed very little and didn't advise independent testing. They said it repeated, sometimes inaccurately, information given by Mr H and agreed with his identification of cause with no independent verification. In their conclusions, company CM said, based on evidence presented, they agree with TICL that damage to navigation equipment is typical of a lightning strike and that this may have been the event that TICL had identified in December 2023. Company CM said it appeared Mr H was claiming for an earlier strike to support damage to items that were damaged prior to this, for reasons not identified but likely to be wear and tear and age related.

I have taken company CM's report into account, but I'm not persuaded this demonstrates the incident didn't happen in the way Mr H described or that a lightning strike wasn't the cause of the damage Mr H is claiming. I say this for a number of reasons. Firstly, company CM carried out a desktop review and their report notes the limitations as, *"This report is based on a review of documents supplied."* and *"The vessel was not seen, the insured was not contacted, no person who supplied a report or comment to the insured was contacted. All contact has been with [Claims Manager at claims administrator]."* The claim here involves damage to electrical parts and components which would likely require visual inspection and testing to assist in determining the extent and cause of the damage. So, I think it's fair in the circumstances to attach more weight to reports from suitably qualified independent experts who have been onboard the vessel to carry out an inspection.

Secondly, I acknowledge company CM have provided their opinion on other expert reports, but I can't say they've provided anything persuasive to demonstrate why the findings from those reports shouldn't be taken into consideration and why they weren't independent. It's clear both Mr H and TICL had concerns about company M's report, but the information shows Mr H's concern related more specifically to company M's report not accurately reflecting what he'd said. I can't see Mr H raised any objections to the overall findings. In any event, even if I was to discount this, I'm still persuaded by the strength of evidence provided by the other five reports.

TICL also appointed another surveyor, company CT. They did inspect the vessel and prepared a report on the damage as well as the causes. Company CT said they'd seen no actual evidence of lightning strike damage in person or in reports. They said there should be documentary evidence and physical evidence of damage, and both are lacking in this matter. Company CT said the only evidence they'd found to date of any high transient voltages had been the damage to the NMEA circuit board, and they recommended that settlement should only cover associated sensitive electronic equipment networked to the NMEA. Company CT said their argument is based on the premise that indirect lightning damages sensitive electronics, and as the NMEA shows damage, all sensitive electronics connected to the NMEA circuit could potentially be damaged. They said the remainder of the items on the claim cannot be supported due to insufficient evidence, and also the minimal visible impact an indirect lightning strike would present.

Company CT said they're of the view that the cause of damage to robust electrical and mechanical equipment is an amalgamation of a number of factors, which included mothballing during the Covid-19 period, normal wear & tear, delays in getting repairs implemented immediately after the damage was reported, and a possible lack of correct maintenance and repairs by qualified technicians. TICL's claim settlement offer of £9,108.65 was based on this.

I have carefully considered company CT's findings and balanced this against the other reports which support Mr H's claim. The first point I would make is that, numerically, there are more experts supporting Mr H's claim. Secondly, company CT inspected Mr H's vessel in August 2024 – which is around eight months after Mr H reported the incident. The information shows repairs were already underway. Mr H argues company CT's findings aren't based on an early inspection of the vessel and before repairs were undertaken. He says company CT's inspection was months later after repair work and after failed equipment had been stripped out. As I've said, I'm not an expert in marine electronics but I think it's fair and safe to conclude that not being able to inspect all damaged equipment while in situ, would likely introduce some limitations when assessing the full scope of any lightning related damage. So, in this case I've taken into account the expert reports and decided the complaint on what I find most persuasive. And in this case, taking into account all the information I've seen, I'm more persuaded by the expert reports supporting Mr H's claim. There is the numerical factor here, but beyond that, those inspections are more contemporaneous with the first notification of loss and some of those inspections also took place before any repair work was undertaken.

So, in this case, I've thought about which reports I find most persuasive. And I believe the report from company A and company L are most persuasive. They're broadly similar in terms of the findings, but I find them particularly persuasive as they are both from suitably qualified independent experts, are both detailed, involved a more thorough and complete inspection, and more contemporaneous with the date Mr H reported the claim. And, I also find it persuasive that one of the other independent experts here, company B, in their own report, referred to company A and company L's investigations as "*thorough*". I've found company A's report contains a comprehensive list of repairs which are required to return Mr H's vessel to its pre-loss condition. So, I think it's fair and reasonable in the circumstances for TICL to settle the repairs in line with the works identified by company A as needed to repair the vessel. I can see company L and company B have commented on specific areas of damage which they attribute to wear and tear, and I think it's fair in the circumstances for TICL not to include those. I acknowledge these repair costs will be higher than what TICL included in their settlement offer, so I will leave it open for TICL to decide whether the total repair costs now would mean deeming the vessel a total loss.

Turning now to the expert reports obtained by Mr H. I can see Mr H had to provide these to prove his claim and also to address concerns raised by the claims administrator and TICL. I understand TICL are relying on a section within the policy terms and conditions which says, in the event of any occurrence which might give rise to a claim, Mr H must, if necessary and at his own expense, provide TICL with any additional information which they may reasonably require. I acknowledge this is within the policy terms and conditions, but I've thought about whether, in the circumstances of this case, it's fair and reasonable for Mr H to be responsible for the costs incurred in obtaining the reports.

The information shows TICL had concerns about company M's report as they believed it wasn't detailed enough and, as described by company CM, was of a poor standard. That being the case, it's not clear why TICL, at the point they first had concerns about company M's report, didn't then appoint an alternative surveyor. I can see the claims administrator went back to company M on a few occasions to raise their concerns about the period between the date Mr H claimed the lightning strike occurred and when he reported the claim. While company M responded to those points, if TICL had doubts about the accuracy or completeness of company M's opinion, then I think it would've been reasonable in the circumstances for them to have promptly arranged a survey from an alternative expert. Instead, a reservation of rights letter was issued, and the parties then entered into a dispute around when the lightning strike happened and what damage was attributable to this.

Given that TICL didn't promptly take steps to handle the claim following concerns they had about their own appointed expert and were asking Mr H for additional information, I acknowledge why Mr H says he had to appoint his own experts to help support his claim and to address the points raised by TICL. Given these reports do support Mr H's claim, I think it's fair and reasonable for TICL to be responsible for the costs incurred by Mr H in appointing company N, company B, company L and company A. If Mr H has already paid for the reports, then he'll need to provide TICL with evidence of this. That being the case, TICL should reimburse those costs to Mr H together with 8% simple interest per year from the date Mr H paid for them to the date of settlement.

It's clear from the information, Mr H and Mrs W have been caused considerable trouble, frustration and worry together with significant inconvenience over a period of several months. The information shows Mr H was becoming increasingly frustrated at what he perceived was TICL's attempts to avoid paying him a fair settlement in circumstances where he believed there was significant and compelling evidence proving his claim. And, I've already mentioned above how I believe things could've moved forward more promptly if TICL had concerns about company M's report – instead the lack of progress in this respect meant the claim took longer than it reasonably should have. Taking this all into account, and factoring in the impact on Mr H and Mrs W and the duration of that impact, I think it's reasonable in the circumstances for TICL to pay them £500 compensation.

It's important for me to make it clear, my decision focuses on the steps TICL need to take to put things right in respect of the repairs. The information shows there have been discussions between the parties around marina fees, other costs incurred by Mr H and also additional testing. I haven't addressed those points which form part of the wider overall claim as the focus for me in respect of this complaint was to make a determination on the repairs.

The parties have provided extensive comments during the investigation and also following our investigator's view. I wish to reassure the parties I've read and considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Putting things right

I've taken the view that TICL haven't offered a fair settlement for Mr H's claim and there were issues with the claims handling. So, TICL must take the following steps:

- settle Mr H's claim for damage to his vessel, subject to the policy terms and conditions, in line with the works identified by company A as needed to repair the vessel. Company L and company B have commented on specific areas of damage which they attribute to wear and tear, and I think it's fair in the circumstances for TICL not to include those. I acknowledge the costs in doing this will be higher than the repair costs assessed by TICL when calculating their settlement offer. So, it will be for TICL to decide whether to arrange for these repairs or to deem the vessel a total loss;
- pay for the costs incurred by Mr H in appointing company N, company B, company L and company A. If Mr H has already paid for the reports, then he'll need to provide TICL with evidence of this. That being the case, TICL should reimburse those costs to Mr H together with 8% simple interest per year from the date Mr H paid for them to the date of settlement. TICL should provide Mr H and Mrs W with a certificate showing any taxation deducted; and

- Pay Mr H and Mrs W £500 compensation for the considerable trouble, frustration, worry and significant inconvenience caused.

My final decision

My final decision is that I uphold the complaint. Travelers Insurance Company Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs W to accept or reject my decision before 3 April 2025.

Paviter Dhaddy
Ombudsman