

The complaint

Mr W complains about MS Amlin Insurance SE (“MSAI”) and the decision to decline the claim he made on his marine insurance policy.

What happened

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Mr W held a marine insurance policy, underwritten by MSAI, when his boat was damaged following ingress of water. So, he contacted MSAI, through the intermediary handling the claim on their behalf, to make a claim.

MSAI instructed an independent surveyor, who I’ll refer to as “J”, to inspect the damage to Mr W’s boat. And having done so, J provided a report which contained their opinion that the water ingress occurred gradually, due to a lack of appropriate maintenance. So, based on this opinion, MSAI proceeded to decline the claim, referring to exclusions contained within the policy documentation. Mr W was unhappy about this, so he raised a complaint.

Mr W didn’t think MSAI’s claim decision was fair, explaining why he didn’t believe he could have, or should have, been reasonably aware of the maintenance requirements which included regular replacement of the gear cables and bellows to the sterndrives. So, because of this and the delay in inspection of his boat which he felt was likely to have made any damage worse, Mr W wanted his claim to be accepted and the required repairs covered by MSAI.

MSAI responded to the complaint and didn’t agree. They felt they had acted fairly, and within the policy terms and conditions, when declining Mr W’s claim, based on the expert opinion provided by J. So, they didn’t offer to do anything more. Mr W remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They thought MSAI had fairly declined Mr W’s claim, based on the policy exclusions relating to gradual deterioration and incursion of water that wasn’t sudden and unforeseen, considering J’s expert opinion. Nor did they think there was an unreasonable delay in inspecting the boat that should have caused MSAI to reach a different decision. So, they didn’t recommend MSAI take further action.

Mr W didn’t agree, providing several comments setting out why. These included, and are not limited to, his continued belief that he couldn’t have reasonably been aware of the need to replace the gear cables and bellows to the stern drive, considering his knowledge and boating qualifications. So, in line with what he thought was our services approach, he maintained his belief that MSAI were unfair to decline his claim.

Our investigator considered Mr W’s comments, but their view remained unchanged. They explained the guidance Mr W referred to related to technical knowledge and they set out why they felt this differed to Mr W’s understanding of routine maintenance that was required. They explained why Mr W had a responsibility to ensure his boat was appropriately

maintained and so, why they weren't asking MSAI to do anything more. Mr W remained unhappy with this response, reiterating how the claim decision had impacted him financially. As Mr W didn't agree, the complaint has been passed 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'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr W. I recognise it would have been upsetting to discover his boat had been damaged, especially when the cost to repair this damage was likely to be significant. I appreciate Mr W took out insurance with MSAI to help assist him both practically and financially in situations such as this. So, when MSAI declined the claim and this left Mr W in a situation where he would need to cover the costs of the repairs himself or be left with a boat he was unable to use, I can understand why he would feel unfairly treated and choose to complain.

But for me to say MSAI should do something differently, for example overturn their claim decision and accept it, I must first be satisfied they have done something wrong. So, I'd need to be satisfied MSAI failed to act within the terms and conditions of the policy Mr W held when declining the claim. Or, if I'm satisfied they did act within these, I'd need to be persuaded MSAI acted unfairly in some other way, which had a direct impact on the claim outcome. In this situation, I don't think that's the case and I'll explain why.

Before I do, I think it would be useful for me to set out what I've considered and more importantly, how. It's not my role, nor the role of our service, to re-underwrite Mr W's claim as we don't have the expertise to do so. Instead, it is my role to consider the actions MSAI have taken alongside the policy documentation and other information available to them at the time. This includes the expert opinion from J.

I've read through the report compiled by J at length. And I'm satisfied this report provides J's professional opinion that the water ingress which damaged Mr W's boat was caused by degradation of the gear cables and bellows to the stern drive. And, that these should have been replaced as part of the expected maintenance routine. J's report also provides their professional opinion that the water ingress had occurred over a period of time, based on the damage present in the engine area itself.

In line with our services approach, we deem it fair for a business such as MSAI to rely on an expert opinion when reaching their claim decision, unless there has been more persuasive evidence provided that conflicts it.

In this situation, I note Mr W has accepted the gear cables and bellows to the stern drive weren't replaced. And he's not provided a differing opinion from another expert to put forward another theory about how the water ingress, and so damage, to his boat occurred. Because of this, I think MSAI were fair to rely on J's opinion outlined in the report J compiled.

And when this report is considered against the policy terms and conditions, I'm satisfied that there were exclusions that MSAI were fair to rely on, namely the exclusions relating to gradual deterioration and where the incursion of water into the vessel isn't sudden or unforeseen. I note these were quoted directly in our investigator's original outcome and so, I

don't intend to quote them directly again.

I'm satisfied MSAI were fair to deem the cause of the water ingress to be caused by gradual deterioration, as the gear cables and bellows that should have been replaced were damaged and both J, and the company Mr W employed to maintain his boat, confirmed this to be the reason for the water ingress. And, based on the boat maintenance requirements and the fact other gear cables and bellows had been replaced, I'm satisfied this deterioration could have, and should have, been identified and prevented by servicing, maintenance and replacement.

And J's report also concluded the water damage had been occurring for some time, so I can't say MSAI were unfair to explain the claim would also be excluded under the incursion of water exclusion referred to above.

So, because of the above, I'm satisfied MSAI acted within the terms and conditions of the policy Mr W held when declining the claim.

But as I set out earlier in my decision, I must also be satisfied they acted fairly when doing so. And I note Mr W doesn't think they were, referring to his understanding and knowledge of his boat and its seaworthiness alongside what he felt were delays in arranging J's inspection.

I want to reassure Mr W I've thought carefully about the above. But crucially, our service's guidance he refers to relates to a technical knowledge of his boat and its sea worthiness. This is separate to Mr W's understanding, and responsibility, to ensure his boat was appropriately maintained. While I note he didn't have the qualifications to maintain the boat himself, he chose to employ the services of another company to undertake this work, in a similar way to how we would expect a car to be maintained in line with a motor insurance policy.

It appears that this company failed to maintain the boat in line with its maintenance requirements. While I note this isn't the fault of Mr W, it also isn't the fault of MSAI. And as this failure to maintain the boat had a direct link to the damage caused, as outlined by J, I'm unable to agree that Mr W's knowledge on this occasion should impact the decision I've reached.

And while I note it took some time for J to inspect Mr W's boat, an insurer such as MSAI are entitled to take the necessary steps to ensure a claim is appropriately validated. And in this situation, this required arranging for an inspection to take place abroad, which I'm satisfied was always likely to take more time than usual to arrange.

Having considered it took around six weeks from the date of claim to the date of inspection, considering the location of Mr W's boat and the fact it had been moved to a dry dock shortly after the damage was found, I'm not persuaded that MSAI acted unfairly here in a way that should be compensated for. Nor do I think it impacted the overall claim outcome, as I note the company who recovered Mr W's boat, and moved it to a dry dock, also had the same opinion regarding the cause of the ingress as J found when completing their inspection. So, I don't think the delay caused additional damage that influenced the overall claim decline.

So, because of all the above, I'm not directing MSAI to take any further action on this occasion.

My final decision

For the reasons outlined above, I don't uphold Mr W's complaint about MS Amlin Insurance SE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 April 2025.

Josh Haskey
Ombudsman