

The complaint

Ms H and Mr S complain that MS Amlin Insurance SE unfairly declined a claim they made under their marine insurance policy.

MS Amlin is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As MS Amlin has accepted it is accountable for the actions of the agents, in my decision, any reference to MS Amlin includes the actions of the agents.

Ms H and Mr S are joint policyholders, but most of the communication regarding the claim and complaint has been from Mr S. So, I'll refer mainly to him in my decision.

What happened

In 2020, Ms H and Mr S commissioned a canal boat to be built by a boatbuilder. The build included a stainless-steel freshwater tank. After the build was completed, Ms H and Mr S arranged for it to be fitted out by various contractors.

In April 2021, Ms H and Mr S moved into the boat. A couple of weeks later they noticed it was listing and discovered water in the bilge. They reported the issue to the boatbuilder and plumber. Mr S also contacted MS Amlin and advised it of the situation. But he didn't make a claim under his marine insurance policy because he hadn't yet established where the water ingress was coming from.

A plumber and boatbuilder attended but couldn't establish the cause of the problem. The boatbuilder said he would diagnose the issue, but he didn't return.

Mr S says there was a dispute with the boatbuilder which meant they were unable to investigate the cause of the issue without his approval. After several surveys, it was established in December 2022 that the cause of the leak was a bad quality weld of the water tank.

In January 2023, Mr S made a claim under his policy with MS Amlin for the damage caused by the leak. MS Amlin arranged for a surveyor to attend the boat and complete a report. It then decided to decline Mr S's claim.

Mr S made a complaint, but MS Amlin maintained its position. So, Mr S asked the Financial Ombudsman Service to consider the matter.

Our investigator didn't think Mr S's complaint should be upheld. She thought MS Amlin's decision to decline the claim was fair.

Mr S disagreed with our investigator's outcome. He made several comments about why he believed MS Amlin's decision to decline his claim was unfair. He also provided a report from a surveyor who inspected his boat in February 2025. Our investigator considered the additional information Mr S provided but this didn't change her opinion on the outcome to the complaint.

Mr S asked for his complaint to be referred to an ombudsman. So, it's been passed to me to decide.

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 not to uphold Ms H and Mr S's complaint. I'll explain why.

I've considered everything Mr S has told our service, but I'll be keeping my findings to what I believe to be the crux of his complaint. I wish to reassure Mr S I've read and considered everything he has 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.

Insured event

When a policyholder makes a claim, the onus is on them to show that an insured event caused the loss or damage. Ms H and Mr S's policy provides cover for loss or damage caused by an event listed in it. For their loss to be covered, it would need to fall under one of those events. If it doesn't – then the claim isn't covered and won't be settled. So, I've needed to consider whether Mr S has shown that an event listed in the policy caused the damage.

Mr S says the loss he is claiming for arose due to a Latent Defect, which is one of the events listed in the policy. The terms and conditions say the vessel is covered for losses arising from a "*Latent Defect, excluding the cost or expense of repairing or replacing the defective part.*"

"*Latent Defect*" is defined as: "*a hidden flaw, weakness or imperfection in the design, manufacture or build of the Vessel that is not apparent by routine inspection and is not a result of Gradual Deterioration or a lack of maintenance.*"

Mr S has made it clear that he isn't trying to claim for the damaged water tank, but he wants to claim for consequential damage to his boat as a result of the leak. However, MS Amlin disagrees that the defect in the tank falls within the policy's definition of Latent Defect. It says this is because the hole could have been identified either pre or post installation.

In its response to Mr S's complaint, MS Amlin said it was of the view that even a cursory inspection prior to or at the time of the installation would have identified the poor build quality of the tank. It understood that no pressure test was carried out before installation. It also commented that the issue would have no doubt been discovered and the tank rejected before installation if a surveyor had overseen the build and fitting out of the vessel.

Mr S says the boatbuilders, who have expertise in welding did not spot the issue. The boatbuilder informed him the tank had been pressure tested. The plumber who attended in June 2021 and the expert surveyor who attended in July 2022 weren't able to locate the cause of the leak. He says a number of welding experts had stated it's not possible to tell if a weld is watertight by visual inspection. Even if a weld looks to be of poor quality, it may still be watertight.

I understand it wasn't possible to determine the location of the leak in the tank until the whole tank had been removed. This didn't happen until December 2022. However, I think it's

clear from the photographs of the tank that all of the welding was poor. It wasn't limited to the location of the hole.

The surveyor Mr S and the boatbuilder jointly instructed to inspect the tank in December 2022 commented that *"various welding (was) considered to be of a poor professional, standard."* The weld inspector who inspected the tank the same month reported that *"all welds (were) unacceptable, found to contain holes, lack of fusion and porosity throughout."* And MS Amlin's surveyor who inspected the boat in February 2023 concluded that *"the cause of the leak (was) poor workmanship in constructing the stainless-steel water tank. The welding is extremely poor and the hole in the weld has been there since construction."*

I acknowledge Mr S's comment that a weld may still be watertight, even if it looks to be of poor quality. But I think the appearance of the tank should reasonably have been a concern prior to the boat being fitted out.

Mr S has provided evidence from a welder which says that a 'routine inspection' of a stainless-steel freshwater tank is a pressure test.

The report from the surveyor MS Amlin instructed says: *"There is no pressure test plate on the tank and it is assumed that the tank was fitted by the builder without any testing having been done."*

Mr S says the boatbuilder carried out a pressure test. He's provided an email the boatbuilder sent him in July 2021 which says: *"As I understand it now you say the plumber could'nt [sic] pressurise the water tank because it has a leak, well that's not true as we pressurise the tanks even if it has pin holes in it..."*

This email doesn't specifically say a pressure test was carried out on Mr S's water tank by the boatbuilder. I also note the email was sent after Mr S had raised concerns about the leaking tank with the boatbuilder. There isn't a document to showing the results of a pressure test carried out by the boatbuilder. So, I'm not persuaded this is evidence that the boatbuilder carried out a pressure test on the tank around the time it was installed.

The only document I've seen to show a pressure test took place was from the plumber who attended in June 2021 (after the escape of water incident) which says the *"water tank could not hold pressure above a recordable level. Connected directly to mains water feed which caused an audible leak although not visible. Will require further investigation and rectification..."*

While the plumber wasn't able to determine precisely where the leak was, he was able to conclude that the tank was leaking. The water tank failed the pressure test after it started leaking. So, I think it's likely that a leak from the tank would have been apparent from a routine pressure test if one had been carried out.

Mr S has commented that it's not possible to declare with any certainty when the hole manifested, i.e. before or after the boatbuilder's inspections of the tank. He says stating the hole was there before the boatbuilder tested it, is poor conjecture.

There isn't sufficient information for me to say when the hole appeared. However, there's no documentary evidence to show that a pressure test was carried out by the boatbuilder. While it's possible the hole appeared after the boatbuilder completed their work on the boat, I don't think I could reasonably conclude that the *"flaw, weakness or imperfection"* in the tank was *"hidden"* given the visibility of the poor welding. So, I'm not persuaded that Mr S has shown that the loss he is claiming for is as a result of a Latent Defect.

Policy exclusions and conditions

While I'm not persuaded Mr S has shown that an insured event occurred, for completeness, I've gone on to consider the other reasons MS Amlin has given for declining Mr S's claim.

MS Amlin says a significant element of the claim was caused by water leaking into the boat from the tank from April 2021 until the tank's removal in December 2022.

It's referred to the following policy exclusions:

- *"Gradual Deterioration unless it could not have been identified by routine inspection and could not have been prevented by servicing, maintenance or replacement in accordance with the relevant manufacturer's instructions, or generally accepted practice and advice from a qualified marine surveyor who is a member of their relevant professional surveying body."*
- *"osmosis, barnacle growth or fungal growth."*

"Gradual Deterioration" is defined as *"the gradual degradation of the Vessel caused by wear and tear, rust, rot, oxidation, corrosion, electrolytic or galvanic action, wasting or weathering."*

MS Amlin has also referred to the following policy conditions:

- *"You must maintain the Vessel for the use intended."*
- *"In the event of any incident that may give rise to a claim You must:...take all possible steps to limit further loss or damage to the Vessel."*

MS Amlin says Mr S did not take all possible steps to limit further loss or damage because he continued to use the water tank after discovering there was an issue with it. It says the continued use of the tank between April 2021 and December 2022 contributed significantly to the damage.

Mr S says he continued to use the tank because he had been advised by the boatbuilder and marine repair company that the damage to the sub-floor and bilge had already been done. He says he maintained the boat by pumping the water from the bilge on a regular basis.

The mould inspection report dated February 2023 refers to mould on timber floor battens, areas of the ceiling voids and beneath the kitchen drawer units on the chipboard subfloor. It goes on to say:

"A previously made inspection hole showed significant amounts of standing water beneath the suspended floor assembly. As such there is likely to be extensive further hidden mould growth within the floor, walls and ceiling assemblies."

The surveyor MS Amlin instructed to inspect the boat has commented that:

"The mould, rot and base plate corrosion would have worsened the longer the leak was left unaddressed... If I understand the insured correctly, he states the sub-floor would need replacing due to a single flooding incident. I do not agree with this. The leak was fresh water. Pumping it out and allowing the bilge to vent would have been sufficient. There will always be water in a bilge. It is not necessary to replace the floor and fit out each time."

Mr S disputes this. He says the boat was damaged by the initial incident, and the repairs he is claiming for would have been necessary regardless.

He's provided a report from a surveyor who examined the boat in February 2025 which says:

"Regardless of the dates of previous inspections the only solution to preserve the flooring and the structures which it supports would be to lift the whole of the sub-floor; dry out the ballast and associated steel bottom shell and framing and refit/replace as necessary. Pumping, vacuuming and ventilation in-situ is inadequate as hidden decay would already have begun."

Mr S says he believes the process of lifting the sub-floor would likely damage it, resulting in it needing replacing.

The reports and photographs I've seen show there was significant mould and corrosion in the boat, which indicates gradual deterioration. I think this is likely to have got worse because the water tank continued to be used over a long period of time.

While the surveyor who attended in February 2025 has suggested that the whole sub-floor would have needed lifting for the bilge to dry out after the initial incident, this conflicts with what MS Amlin has said. The boat wasn't given the opportunity to vent after the initial incident. So, it's difficult for me to conclude that this wouldn't have been sufficient to avoid the damage Mr S is claiming for.

On balance, I think the damage to the boat is likely to have got significantly worse because the defective water tank continued to be used after it was found to be leaking. So, I think it was reasonable for MS Amlin to conclude that Mr S did not take all possible steps to limit further loss or damage to the boat.

I appreciate Mr S feels MS Amlin caused him and Ms H stress and wasted their time by encouraging them to submit a claim and send a surveyor. But MS Amlin's rejection of their claim wasn't simply down to the length of time it took them to make it. It declined the claim based on the findings of the surveyor. While I understand it was disappointing that MS Amlin declined the claim, I think it's decision to send a surveyor to try to validate the claim was reasonable.

In conclusion

I've explained why I don't think Mr S has shown that the damage to his boat was caused by an insured event. Even if there was evidence that persuaded me damage was caused by a Latent Defect, I think MS Amlin would be entitled to refuse to cover this due to the relevant exclusions and policy conditions I've referred to. So, I think MS Amlin's decision to decline his claim was fair and reasonable.

I appreciate my answer will be disappointing for Mr S and Ms H. I understand this has been an extremely stressful situation for them. Not only have they been impacted by the damage to their home, but I'm aware they have been involved in a lengthy dispute with the boatbuilder. While I empathise with them, I haven't found reason to uphold their complaint.

My final decision

For the reasons I've explained, I don't uphold Ms H and Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H and Mr S to accept or reject my decision before 12 May 2025.

Anne Muscroft
Ombudsman