

The complaint

Mr D complains that MSIG Europe SE (“MSIG”) has treated him unfairly in relation to a complaint made under his yacht insurance policy.

Any reference I make to Mr D or MSIG includes the actions/communications of any respective agents or representatives.

What happened

The background of this complaint is well known between the parties. So, I’ve summarised what’s happened below:

- Mr D owned a vessel (“C”) that was insured under a MSIG yacht insurance policy.
- In mid-2021 C suffered considerable damage in an incident involving a third party. Mr D made a claim to MSIG and it engaged with the third party’s insurer (“Company N”). Company N rejected liability for the incident.
- MSIG initially declined to cover the claim, saying the vessel was only insured to be ashore at the time of the loss. But MSIG later told Mr D it would agree to settle the matter on an ex-gratia basis.
- During MSIG’s repair of C, it became apparent there was more significant damage than previously identified. And MSIG stated due to matters related to Covid-19 the claim and repairs could not proceed promptly.
- Mr D complained, raising concerns about MSIG’s actions. He said it had failed to carry out a sufficient investigation and had relied upon the comments and investigation of Company N’s surveyor – which in itself was not detailed.
- During the life of this claim, Mr D also made a claim under his legal expenses insurance cover (“LEI”) for uninsured losses from the third party. This was provided by a separate insurer (“Company A”).
- Following this a back and forth about the cost of repair took place between Mr D and MSIG. In late 2023, MSIG said it offered a sum of £26,500 in “*full and final settlement*” of the claim, taking into account the total loss of C and him retaining the salvage.
- Mr D has said he signed this agreement under the belief he would recover his uninsured losses elsewhere - which would’ve been enough to cover the remaining repair costs.
- Following this – Mr D raised further concerns with MSIG. And there had been an disagreement about the value insured under the policy/what had been agreed within the settlement.
- MSIG said it agreed to pay an addition £4,090 on the basis he would not seek to pursue the uninsured losses any further. This brought the total settlement to £30,590. MSIG has said in October 2024 Mr D signed a Discharge and Subrogation Form which stated this was in “*full and final settlement*” of the claim and would prevent

Mr D seeking any uninsured losses.

- Mr D has said he was informed by his LEI provider (Company A) that they were no longer willing to act on his behalf to obtain the uninsured losses. And he had concerns about their actions.
- Mr D since brought the complaint to this Service. He said he held MSIG accountable for failings in its claim handling which he said led to his uninsured losses which he's been unable to recover. And he said his outstanding uninsured losses from the time of the incident until October 2024 amounted to over £12,500. He said this sum comes from various costs incurred including storage of C, travel, necessary parts and repair costs.
- Mr D's complaint was looked into by one of our Investigators who didn't uphold the complaint. She said:
 - Mr D and MSIG had both put forward conflicting versions of events regarding the quality of MSIG's handling of the claim. MSIG had put forward various submissions defending its position in light of the concerns raised by Mr D.
 - Mr D signed a settlement in December 2023 that clearly set out this was a full and final agreement for the insurance claim he'd made.
 - Following the further dispute Mr D signed another agreement in October 2024 which also clearly set out Mr D agreed he would not take any further action against the insurer for any losses in connection with the incident that were not insured under the policy.
 - She was satisfied the wording of the agreements were clear. And given Mr D's actions to effectively negotiate with MSIG following the first, she felt it wouldn't be fair and reasonable to intervene in this agreement that was already in place. And she didn't agree there was any evidence to suggest Mr D had been pressured or forced into accepting
- Mr D disagreed and provided a detailed response, in summary:
 - Mr D said he'd had limited experience in dealing with insurance in the past.
 - He gave an account of why C had been incorrectly insured ashore and the party responsible for this.
 - The initial decline of the claim caused Mr D substantial stress and financial loss. And he described the steps that had been necessary to carry out repairs at the time.
 - Mr D raised concerns about the handling of the LEI claim by Company A.
 - Mr D provided further details about the incident itself in 2021 and the evidence that he said supports he was not at fault for the incident.
 - MSIG had put Mr D into a position where he signed the agreements under economic duress and therefore the agreement should be voidable.

This didn't change the Investigator's mind, so the matter was passed to me for an Ombudsman's final 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 this complaint. I'll explain why.

In this case its evident there are opposing perspectives on the work carried out by MSIG, including its handling, and the settlement that was reached.

The question I am going to first consider is simply whether it is appropriate for me to intervene in a matter like this if an agreement has already been reached by the parties.

So, I'm going to consider these two agreements, including their scope, whether they were clear, and the circumstances around this when the agreements were signed.

I won't restate the exact wording of the first

December 2023 agreement

I've been given a copy of the agreement that was signed by Mr D. I will not quote the full statement as both parties have copies of this and it has been quoted elsewhere, but significantly it states:

"I, [Mr D], sole owner of the vessel [C], do hereby agree to accept the sum of £26,500.00 in full and final settlement of my claim for the Constructive Total Loss of my vessel arising out of the incident occurring on the 21st May 2021."

The wording is clear, and I'm satisfied the evidence supports Mr D was most likely aware of what he was signing.

Following this Mr D engaged in a further dispute with MSIG and it agreed to increase the settlement amount. I won't get into these reasons here, but essentially Mr D put forward he should be owed more and MSIG agreed to increase the sum if he would waive his rights to pursue any other claims for losses that weren't insured under the policy.

Again, I will not quote this entire agreement, but I've included some of the key parts below.

"I, [Mr D], sole owner of the vessel [C] (the "Vessel") hereby confirm that I accept the sum of GBP30,590.00 (Thirty Thousand, Five Hundred and Ninety Pounds) (the "Settlement Amount") in full and final settlement of any and all claims I have under Policy No. [Mr D's policy number] (the "Policy") and in connection with the above-captioned Incident..."

"...I hereby discharge and release [MSIG] (the "Insurers") from any and all claims and liabilities of any nature whatsoever, whether now evident or hereafter to become manifest, that I have or might have against the Insurers in respect of the Policy and in connection with the above-captioned Incident..."

...I confirm that in consideration of the payment of the Settlement Amount, I will no longer pursue any claims for losses in connection with the Incident that are not insured under the Policy."

In my view, the wording of the agreement is very definitive, and I'm satisfied it clearly outlines that this is a final agreement and would not only eliminate any further dispute in relation to the claim itself, but also any claims for losses in connection with the incident in question that weren't insured under the policy.

Mr D has indicated he believed he may recover costs elsewhere under his LEI policy which is why he signed it. Even if this was the case that he did believe the LEI claim would succeed, I wouldn't agree that his belief should have any bearing on this agreement he's made with MSIG. I say this as the agreement is clear it is bringing matters to a final close and isn't dependent upon anything else. So, his view in hindsight on whether this was the

best outcome for him shouldn't (in my view) change the terms of the agreement he made.

Mr D has indicated he was under economic pressure and said this was a form of duress. Having looked at all the evidence and given Mr D was clearly in communication back and forth with MSIG around this time I'm not persuaded there's enough to support his allegation. Mr D's own actions following the initial agreement reflect to me his ability to negotiate with MSIG. So, this hasn't changed my mind.

Overall, I'm not upholding this complaint. I say this as I do not think it would be fair nor reasonable for me to consider the circumstances of this complaint when both parties have already reached an agreement.

My final decision

For all of the above reasons, I'm not upholding this complaint or directing MSIG Europe SE to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 January 2025.

Jack Baldry
Ombudsman