



<b><u>Decision Ref:</u></b>	2020-0085
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Marine or Boats
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

In **February 2015**, the Complainant entered into an insurance policy with the Provider in respect of his barge. The Complainant's barge sank in **August 2015**. The day after it sank, the Complainant notified his underwriting agent of this event and a marine surveyor was appointed to investigate the cause of the sinking. The parties then began to arrange for the salvage of the barge. The barge was raised in **November 2015**. Subsequent to this, in **March 2016**, the Provider informed the Complainant that it was declining his claim under the policy on the basis that the barge was not properly maintained nor was it in a seaworthy condition.

**The Complainant's Case**

The Complainant explains that his barge was moored on the Grand Canal in Dublin and was occupied by two individuals. At approximately 3am on Sunday, in **August 2015**, the barge sank suddenly. The Complainant advises that he reported the sinking to the Provider.

The Complainant states that on **1 September 2015**, a salvage operation was attempted but proved unsuccessful as the barge had settled in silt which required a specialist salvage company to recover it. The Complainant advises that on **4 September 2015**, he supplied the Provider with two quotations in respect of the recovery of the barge. On **14 September 2015**, the Complainant was informed by the Provider's surveyor that a buyer had been found for the barge which would "... *'do away with the necessity to pay the salvage company 20 000 euro.'* ..." The Complainant states that on **15 September 2015**, the prospective buyer provided an alternative salvage company. The Complainant points out that he had no contact with the buyer and this was done through the surveyor.

On **22 September 2015**, the Complainant states he was informed that another salvage company was retained by the Provider. However, by this stage the barge had been sunken for over one month and was sinking further into the silt. The Complainant submits that on **2 October 2015**, he was advised that the Provider had received a revised quote from a salvage company. The Complainant was asked on **12 October 2015**, to give permission to this salvage company to carry out the salvage of his barge. The Complainant advises that around this time he was informed, during a telephone conversation with the Provider that the barge would probably have to be cut up in order to salvage it due to the suction effect of the silt and the pressure that would be required to lift the barge. The Complainant advises that: *"I asked if I would be compensated for the loss of the barge and I was told that I would be."*

The Complainant states that the salvage operation did not commence until **6 November 2015** which was three months after it had sunk. The Complainant submits that severe damage was caused to the barge during the lift due to the suction effect of the silt. The barge was finally lifted on **7 November 2015** and towed to a point where it was allowed to sink again by the salvage company. The Complainant advises that the barge was then moved to a yard owned by the salvage company.

The Complainant explains that he met with the surveyor to discuss the cause of the sinking of the barge. During this conversation, the Complainant states that he was informed about a number of design faults with the barge. The Complainant submits that the surveyor expressed the opinion that the sinking was caused by an underwater exhaust pipe which allowed water to enter the barge. The Complainant states that this was confirmed by an agent of a salvage company who advised that the hull could not be sold or repaired as it was not safe.

Subsequent to this meeting, the Complainant states he was informed by the Provider that his claim was being declined due to lack of maintenance leading to deterioration, and also wear and tear. The Complainant advises that he was shocked by this information because:

*"1 I have had boats for the last 30 years both for pleasure and work, for 20 years I was involved in [another maritime] industry and I am familiar with boat maintenance*

*2 the barge was well maintained. We had 2 employees living on the barge and I was due to stay on that barge that evening. It was reported to the Gardai that the craft sank at 3 am in less than 20 mins so we could have been dealing with a tragedy*

*3 I was informed that the sinking was due to design fault by their surveyor. I asked for a copy of his report but they refused."*

The Complainant outlines his complaint as follows:

*"1 The time taken to appoint a salvage company to carry out the salvage process. This delay meant that the craft was a write off due to the suction effect of the silt. If the first salvage company had been appointed the craft could have been salvaged without any damage.*

/Cont'd...

*2 The refusal on grounds of lack of maintenance does not make sense. Their surveyor clearly stated that there were design faults that caused the barge to sink.”*

In resolution of this complaint, the Complainant is seeking compensation in the sum of €45,000 being the insured value of the barge.

### **The Provider’s Case**

The Provider advises that the barge sunk in **August 2015** and that the salvage of the barge was complex as it was stuck in soft mud which required a lot of effort to raise. The Provider states that when the barge was refloated, it sank again but was recovered and placed ashore.

The Provider explains that an independent surveyor inspected the barge and confirmed the likely cause of sinking was a disconnected pipe and no seacock on the skin fittings, leaving holes open in the hull. The Provider submits it was the independent surveyor’s opinion that the barge was in an unsafe and unseaworthy condition at the time of the policy inception which is excluded under the policy terms and conditions.

In response to the Complainant’s position that the barge sunk due to a design fault (latent defect), the Provider submits this is not covered by the policy. Referring to page 2 of the policy, the Provider identifies the following clause: *“We will not pay loss or damage claims for: The cost of repairing, replacing, or renewing any defective part in consequence of a latent defect.”*

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. delayed in appointing a salvage company to recover the sunken barge; and
2. wrongfully and/or unreasonably declined his claim.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 10 February 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

***The Policy***

The Complainant incepted the policy in **May 2015**. The policy states as follows:

***“We will pay for loss of or damage to [the barge] directly caused by:***

*...*

- External accidental means,*

*...*

- Latent defects in the hull or machinery,*

*...*

- Negligence, excluding,*

- o the cost of making good any defect in repair, maintenance, or alteration carried out for your account resulting from either negligence or breach of contract.*

- o the cost and expense of remedying a fault or error in design, construction or attributable to betterment or alteration in design or construction.*

*...*

***We will not pay loss or damage claims for:***

- *Wear and tear, depreciation, deterioration, and mildew.*

...

- *The cost of repairing, replacing or renewing any defective part in consequence of a latent defect.*

...

***General Conditions:***

- *You will maintain and keep [the barge], her machinery, boats and equipment in a proper state of repair and seaworthiness and shall at all times exercise due care and diligence in safeguarding them. ...”*

***The Claim***

The Complainant submitted a claim to his underwriting agent on **16 August 2015**. The underwriting agent wrote to the Complainant by email dated **17 August 2015**, acknowledging his claim and advised:

*“We are sorry to hear about the sinking of [the barge], and can advise that we have appointed a marine surveyor ... to assist with your claim. He should be contacting you shortly.*

*In the meantime, please take all reasonable measures to minimise the damage and raise the vessel. The best initial advice is to act as though you were uninsured.”*

At the same time, the underwriting agent appointed a marine surveyor by email requesting that he contact the Complainant and arrange to investigate and report on the sinking of the barge. The surveyor responded later that day stating that he had telephoned the Complainant and salvage experts and that he would visit the barge within the hour.

The surveyor wrote to the Complainant on **18 August 2015** in respect of the likely cost of a potential salvage company to raise the barge but was awaiting confirmation of the job which he expected that day. The surveyor also advised that he would meet the Complainant the coming Saturday (**22 August 2015**) if the barge was raised by then. The Complainant acknowledged this email on the same day.

The Complainant wrote to the surveyor on **20 August 2015**, advising that:

*“I spoke to [the diving company] and he said he would have the boat towed round to [location] by tomorrow ...”*

/Cont'd...

The surveyor wrote to the underwriting agent on **27 August 2015** stating:

*“The company looking after raising the vessel has not carried out the work to date. We understand that last week they had a clash of jobs but the last information I had was they were to start work yesterday. I heard nothing and went down to take a look this morning. Nothing was happening and I cannot contact [the diving company].*

*In view of the delays being encountered, which cannot be good for the vessel, I would suggest that the insured now contacts a salvage company such as ... to organise the raising of the vessel and to bring it somewhere secure for detailed inspection.”*

The underwriting agent responded by email the same day agreeing with the views expressed by the surveyor and asked if he would be happy to agree this course of action with the Complainant.

The surveyor wrote to the underwriting agent on **28 August 2015**, explaining that he spoke with the diving company the previous day who advised that salvage operations could commence the following Monday. The survey expressed the following view of the barge:

*“At this stage it probably makes no difference with respect to damaged furnishings and electrical systems, as they will be well waterlogged. The engine & gearbox should still be salvageable, as they are in fresh water.*

*If [the Complainant] is happy then we should probably let things run but be prepared to act if nothing happens on Monday. ... The problem here is the lack of specialists and lift out facilities. ...”*

The surveyor wrote to the Provider and the underwriting agent on **6 September 2015** with quotations in respect of the cost of raising the barge. The surveyor also pointed out that Waterways Ireland had issued a wreck removal notice and that the parties needed to quickly select a diving company. The Provider responded on **7 September 2015**, advising of the quote it believed to be the most economical. The surveyor wrote to the Complainant on the same day to inform him of the chosen salvage and diving companies requesting that he contact the diving company to give them the go ahead to get things moving. Later that day, the Provider emailed the surveyor to advise him that it had just been informed by the salvage company that its quote was a stand-alone quote and it would not need assistance from the diving company. I note that the Complainant was copied on all of the emails discussed in this paragraph.

The Provider was contacted by telephone by the salvage company on **10 September 2015**, the memo prepared in respect of this telephone call states:

*“[The barge] is buried in the silt, place is very difficult to access. 4 metre deep water. Much bigger job than quoted. Suction from the mud is so big there is no crane that could be going to the site.*

/Cont'd...

*Would take over a week to get her out. ...*

*If the vessel is a write-off, then we can cut her up. Cheaper and easier."*

The surveyor had a similar conversation with the salvage company as demonstrated by an email sent to the Provider on **10 September 2015**. In response to this email, on the same day, the Provider canvassed the idea of cutting up the barge:

*"... With the owner's agreement, would it be more economical to cut her up and lift the parts out? Would there be any residual value if she was lifted in one piece?"*

*I am aware we are running against the clock but that's all I can suggest."*

In an earlier email on **10 September 2015**, the surveyor advised the Provider that he had received video footage of the sunken barge and he had arranged a meeting with the salvage company for the following day to review the situation.

On **14 September 2015**, the surveyor wrote to the Provider to advise that he had been approached by an individual who was interested in purchasing the barge in its present state and would undertake its salvage. The Provider replied indicating that this sounded like a good option but that the Complainant's agreement would be required. The Provider further commented that it had not heard from the Complainant and asked that the surveyor update him as to the offer.

A series of email exchanges took place on **15 September 2015** surrounding the salvage of the barge. In particular, the salvage company wrote to the Provider on **15 September 2015**, apologising for the delay in providing an up to date quotation for the salvage of the barge promising that it would be furnished by close of business. In an email later that day, the salvage company wrote to the surveyor to advise that having *"... investigating the [barge] ... on two occasions, we have had to readjust our costs for salvage of the vessel."*

The surveyor wrote to the Provider on **15 September 2015** in respect of the salvage as follows:

*"... At the moment there is a possibility of another diving contractor raising the vessel commencing this week. They seem confident that they could have it raised for next Monday. Certainly, they are more pro-active than [the salvage company] ..."*

In response to this, the Provider stated:

*"... I note from the information attached referred (sic) to the boat being available for sale or rent. Given information previously advised, did we establish whether the boat was being rented during the past year or prior to the incident ..."*

The Provider also canvassed the idea of using a suction dredger to help with the salvage.

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The surveyor replied to the Provider advising:

*"... Bringing a vessel with a crane on board into the [location] is out of the question. There is a permanent road bridge at the northern entrance with a very low air draft, sufficient for barges and smaller cruisers to pass. The clearance would be under 3 metres.*

*We are working on options and might have some more news later this afternoon. ..."*

Subsequent to this, the surveyor forwarded a quotation from the salvage company to the Provider expressing the view that it was *horrendous*.

A memo dated **15 September 2015**, notes a telephone call which took place between the Provider and the salvage company, it states:

*"Call from [the salvage company]. Sent estimate for lift. He explains that the lift is very complex and would have serious consequences if it went wrong. ..."*

The surveyor wrote to another potential salvage company on **15 September 2015** following up on a request for a quotation to salvage the barge. A quotation was furnished to the surveyor the following day. The surveyor sent this quotation to the Provider on **21 September 2015** believing he had previously forwarded it to the Provider from his mobile phone.

On the night of **15 September 2015**, Waterways Ireland wrote to the Complainant and the surveyor stating that unless the barge was removed by a competent salvage company by **18 September 2015** it would reserve the right to tender for a salvage company to remove the barge. In a memo dated **17 September 2015** in respect of a telephone conversation between the Provider and the surveyor, it states:

*"Call to [the surveyor] to know if there is an estimate from another salvage company. He is forwarding the estimate.*

*The prospective buyer wants to get the boat lifted prior to making an offer. Likely to fall through. ..."*

The Complainant contacted the Provider on **21 September 2015** requesting an update as to the salvage operation. The Provider responded the following day advising that the surveyor, after discussions with various potential contractors, had secured an estimate for the salvage.

The surveyor wrote to the Provider on **22 September 2015**, as follows:

*"... I can inform Waterways Ireland that [the chosen salvage company] have been appointed and advise them that the operation will commence on 3<sup>rd</sup> October ..."*

/Cont'd...



*The big problem with this one is the location. ... The marina is in [the location] which is what is causing difficulty. If it was in the outer basin, a crane could have been floated in through the locks."*

The surveyor emailed the chosen salvage company on **25 September 2015**, forwarding an email received from Waterways Ireland requesting that certain documentation be provided by the salvage company prior to the salvage operation commencing.

In an email to the Provider dated **9 October 2015**, the surveyor advises, amongst other things, that:

*"I spoke with the diving company on Wednesday morning to see what the situation was. They still have not received firm instruction from the insured to proceed. They have the submissions required by Waterways Ireland. If appointed they will start work next week. ...*

*Can you please arrange with the insured for the formal instruction to be issued? ..."*

The Provider wrote to the Complainant by email dated **12 October 2015**, advising him of the need to give the salvage company permission to commence raising the barge:

*"I have received an email from [the surveyor] over the weekend, about the lifting of [the barge]. He's asking for you to give him/the salvage company formal agreement to lift the boat. Once you have been given the invoice, I can pay for the salvage directly and wait for [the surveyor's] report before making any further decision on the repairs or disposal.*

*Let me know if I can help liaising with [the surveyor]."*

I note that the surveyor was also copied on this email and a separate email was sent by the Provider to the surveyor on **12 October 2015** advising him that it had sought the Complainant's permission to commence raising the barge. The Complainant instructed the chosen salvage company to begin the salvage on **12 October 2015**.

The surveyor wrote to the Provider on **16 October 2015** advising that he had spoken to the salvage company and they were currently waiting for Waterways Ireland to approve their paperwork for the salvage. The underwriting agent wrote to the surveyor by email dated **21 October 2015**, querying whether the cause of sinking had been established. The surveyor responded the following day advising that the diver was waiting approval for his plans from Waterways Ireland. On **28 October 2015**, the surveyor advised the Provider that:

*"I just talked to the diving company and they have only received clearance from Waterways Ireland to proceed. Apparently, some of the additional paperwork was generated because [Local Authority] have an interest in the [location] ...*

/Cont'd...

*They have started preparing for the job and should be on site tomorrow. ...”*

The barge was raised on or around **7 or 8 November 2015**.

It appears from the documents provided in this complaint that the Complainant expressed dissatisfaction with the raising of the barge in or around **12 November 2015**.

It was on this date that the Provider replied to an email from the Complainant in which he had expressed his concerns. Its reply was as follows:

*“Right from the start of the claim, we have agreed to cover the costs of salvage because she was an obstruction in the waterways. [The surveyor] was appointed by [the underwriting agent] as an independent surveyor, to identify the cause of the sinking and assess the damage.*

*Until I have received [the surveyor’s] report, I cannot comment whether the claim will be covered by the policy or not. As we have agreed to the first salvage, we will meet these costs ...”*

### **Marine Surveyor’s Reports**

A marine surveyor was appointed by the underwriting agent on **17 August 2015** to survey the Complainant’s barge and establish the cause, nature and extent of the loss. A report was prepared by the surveyor dated **16 December 2015**. The report states:

#### **“2.0 Background**

...

2.3 *When completed [by the original owner] the vessel was placed on a permanent berth ... The engine was never run.*

2.4 *The Insured purchased the vessel in 2013/2014. The vessel was delivered to [location] by haulier in or around 31<sup>st</sup> January 2014 ... The vessel was transported by road to the [location] and placed on a marina berth ...*

2.5 *Reports indicate that the engine was started once when then vessel was delivered but never run again. At Dublin, the vessel was used as occasional overnight accommodation by the Insured and employees.*

#### **3.0 Description of Vessel**

...

/Cont’d...

3.2 *Internally, the vessel is an open boat ... The interior of the vessel was 'home fitted' rather than professionally fitted, this includes all water pipes, sewage disposal and engine cooling systems.*

...

#### **4.0 Details of Attendance**

...

4.2 *When first raised, on 8<sup>th</sup> November 2015, we conducted a walk through examination to see if there was anything to indicate why it sank. The only defect found was a section of corrugated plastic hose in the engine compartment which was attached to an underwater skin fitting. There was no valve at the hull end and the inner end of the pipe was not attached to anything (open). We also noted a fresh water pipe which had been crimped with a vise grips. The diver advised that he had plugged all the skin fittings he had found in relation to overboard discharge. The diver further reported that the open pipe was lying in the engine bilge and that he had secured it to an adjacent cable tie.*

...

4.4 *The vessel fit out relied on the fresh water supply for all water services. This included a large water tank installed below the double bed in the fore cabin. The tank fed the bathroom, bath, gas geyser shower unit, wash basin and toilet. ... All pipes were behind timber side panels with no inspection hatches.*

...

4.5 *In the engine compartment we had already noted an open pipe. The pipe was connected to a skin fitting that penetrated the hull below the waterline and there was no valve on it. It was determined that this was the only direct underwater overboard discharge found. The engine exhaust system was examined closely, because it did not appear correct. From the engine there was a section of standard heavy duty rubber exhaust hose from the engine to the inboard end of a Vetus type water trap. The water trap was incorrectly installed, being 90° out of position. From the outlet side of the water trap there was a corrugated plastic hose leading to the hull and discharging through it, on the sloping stern section to port of the rudder. At the water trap end, it was found that the hose diameter was too small to fit directly onto the water trap. The connection was made by attaching a plastic hose sleeve fitted outside the exhaust hose and the water trap fitting.*

/Cont'd...

4.6 *The stern fitting was also of interest. There was no steering wheel present when we examined the vessel. We also noted that the steering was by cable and chain to a geared quadrant mounted at the head of the rudder stock. The chain had fallen away from the quadrant and was lying on the floor of the engine compartment.*

...

## **5.0 Extent of Loss**

5.1 *The vessel spent almost 3 months below the surface before it was finally raised. When raised, the interior was completely destroyed. It is considered the vessel is uneconomical to repair.*

5.2 *The hull is intact, but if the vessel was ever refurbished we would expect to see the integrity of the water tight bulkhead between the engine and the saloon area restored and effective.*

5.3 *The engine is considered beyond salvage, due mainly to its age. All electrical systems were destroyed.*

...

## **6.0 Conclusions**

6.1 *The vessel was clearly used as random overnight accommodation and was not used as a working craft. All reports indicate that it had never moved from its berth since 2014 when purchased by the Insured. The engine had not been run for a similar period. The engine installation was defective, in that the Vetus water trap and exhaust system was incorrect. The exhaust hose leading from the water trap to the overhead discharge point was not of the correct type. The engine room watertight bulkhead had also been compromised to facilitate the engine installation. The steering system appeared to have been inoperable for a considerable period of time.*

6.2 *In the engine compartment, there was a corrugated plastic hose, believed to be the original intended exhaust hose leading to an open skin fitting. The indications are that the hose was held in place by a loosely applied plastic tie.*

6.3 *The only possible explanation for the sinking was that the hose was dislodged and fell into the engine bilge area. Thereafter, a siphon effect would slowly fill the bilges until such time as the opening was submerged. At this point in time the 50 mm hose would quickly fill the vessel to the point that other through hull openings were submerged.*

/Cont'd...

6.4 ... Based on our observations of both the engine installation and the steering gear we can only conclude it was not well maintained.

6.5 We met once with the Insured during the entire period the vessel was under water. He was vague in respect of providing information with respect to the history of the vessel. The use of the vessel might also be of interest. If used for 'hire or reward' then it must have a Passenger Boat License, issued by the Marine Survey Office, Dept. of Transport Tourism and Sport in Ireland ...

*The use of the vessel, as described by the Insured, might indicate that he gained from allowing employees to live on board rather than paying for accommodation."*

The surveyor wrote to the Provider by letter dated **1 March 2016**, following a meeting with the Complainant on **29 February 2016**. The letter states:

***"Background***

*The vessel was purchased from the previous owner ... The vessel was lying at [location] ... at the time. The vessel was delivered to [new location] by road and launched at the main slipway in the outer basin. It was then towed to a berth outside the Insured's business premises in the outer basin. The vessel lay at berth in the outer basins for a period of 3 to 4 months. It was then towed round to the inner basin and placed on the berth where it eventually sank.*

*The idea behind purchasing the vessel was to provide the Insured with accommodation whilst he was refurbishing the newly bought [business premises]. The intention was that either he or his business partner would use the vessel for overnight accommodation and avoid hotel costs.*

*They intended to sell the vessel when it was no longer required.*

***Engine***

*When purchased the engine was not running. Later, at an unspecified date, when the Insured realised there was a requirement in the Waterways Ireland regulations that the engine should be operational, he arranged for [the diving company] to work on it. The engine was eventually powered up and proved operational. It was never started again, as the Insured did not envisage using the vessel other than for overnight accommodation.*

*The Insured did not make any alterations to the engine installation or have it serviced. The only time the engine compartment was opened up was to access the batteries or battery charger and to check that the bilge pump [w]as working.*

*Therefore, no maintenance records exist for the machinery element.*

/Cont'd...

### **General Maintenance**

*The only issue under this heading was a problem with the vessel's sea toilet. This was reportedly resolved by a neighbouring barge owner who cleared the blockage. Other than that the vessel was untouched.*

*The Insured was shown a photograph showing that the chain for the steering system was disconnected from the rudder quadrant. He expressed the view that this did not concern him as he never intended to use the vessel for navigation purposes.*

*The vessel relied on the shore power connection to keep the batteries charged. The battery power was required for both the domestic service pumps and the bilge pump.*

*Therefore, no maintenance records exist for the general upkeep of the vessel.*

*Therefore, the vessel's steering gear was inoperable prior to the loss.*

### **Use of Vessel**

*When the vessel was first purchased it was used exclusively by the Insured and his business partner for approx. 4 to 5 months, whilst the [business premises] was being refurbished and commenced operations. They would have spent 1 to 2 nights per week on board.*

*The Insured advises that [an employee of the Complainant] was employed as a [occupation] in the business. He further advises that [this employee] was let go some 2 weeks before the date of loss. At the time, he had no accommodation, so as a favour to [the employee], he was permitted to use the vessel as accommodation for 2 weeks whilst he looked for an alternative place to live. This was reportedly done as a favour to a sacked employee.*

...

*He advises that [the employee] now works at another [business] in the city ... He cannot understand why [the employee] will not respond to our attempts to contact him.*

*Therefore, it is safe to say that the vessel was never intended to be used as a leisure craft. The sole purpose of the vessel was to provide overnight accommodation to the Insured and his business partner whilst setting up a new venture in Dublin. The vessel was essentially purchased as a live aboard unit.*

**General Summary:**

*If one is to accept the Insured's account of events, it becomes patently clear that the vessel was not seaworthy at the time of purchase or indeed the inception of the policy of insurance:*

- 1 *The engine was not operational at the time of purchase.*
- 2 *The steering gear was not operational at the time of purchase.*
- 3 *The Vetus water trap on the engine exhaust was not fitted properly and was ineffective.*
- 4 *There was an open pipe in the engine compartment with a through hull fitting that did not have a valve or means of closing.*
- 5 *The engine and steering gear were not maintained by the Insured as he had no intention of using the craft for leisure purposes.*
- 6 *There was no maintenance programmes for the vessel.*
- 7 *The use of the vessel [w]as in connection with the Insured's business. Therefore, one has to query where the funds to purchase it came from.*
- 8 *If it was purchased by the business, then one had to ask did the Insured have an insurable interest, as the beneficial owner was a different entity.*

*We have no option but to state that the vessel was unsafe and unseaworthy at the time the policy was incepted. ...”*

The surveyor wrote to the Provider by letter dated **6 June 2016** in respect of a telephone call received on **2 June 2016** from the person on board the barge prior to its sinking. The letter states:

*“Mr. A. advised that he had been living on board for approx. 2 months, and had paid €100.00 per week rent for the last month. He also advised there was a second person living on board the vessel, [details redacted], who had been on board for 4 to 5 months. [Details redacted] was also paying rent to the insured. He advised that the following defects were reported to the insured but no remedial action had been taken.*

*Toilet not working properly. It was backfilling when flushed.  
The shower unit was not working.  
There were no lifejackets on board.*

/Cont'd...

*Mr. A. had been working as a [trade] for the insured's business. He was doing between 70 to 80 hours per week. He lost all his personal possessions, including family photos.*

*The information conflicts with what the insured has alleged. The only possible conclusion was that the vessel was being used for commercial purposes rather than private and leisure.*

*The information also reinforces the conclusion that the vessel was not properly maintained during the ownership of the insured. Finally, one has to question the ownership of the vessel was it purchased by the business or the insured as a private individual."*

### ***Declinature of Claim***

The Provider wrote to the Complainant by email dated **21 March 2016**, declining his claim, stating:

*"... You explained that the boat was purchased by you and your business partner to provide overnight accommodation and you had no intention to use the vessel for navigation purposes. In this respect, you did not see necessary to keep the boat maintained, or in a seaworthy condition.*

*Unfortunately, this is in breach of the policy general condition 'You will maintain and keep [the barge], her machinery, boats and equipment in a proper state of repair and seaworthiness and shall at all times exercise due care and diligence in safeguarding them.'*

*The damage leading to the sinking of [the barge] has been identified [as] a lack of maintenance, leading to deterioration and wear & tear. The policy also states '**We will not pay loss or damage claims for:** Wear and tear, depreciation, deterioration, and mildew.'*

*With this in mind, I am sorry to say we will not be able to help you further with your claim. ..."*

### ***Final Response Letter***

The Provider wrote to the Complainant on **10 May 2016**, setting out its Final Response to his complaint as follows:

*"As you are aware, your claim was repudiated due to the lack of maintenance, leading to deterioration and wear and tear, which is excluded from your policy.*

/Cont'd...



*'We will not pay loss or damage claims for: wear and tear, depreciation, deterioration and mildew'.*

*I acknowledge your view that this is unreasonable and in your opinion it is due to a design fault (latent defect) that your vessel sunk and therefore we should cover the claim. Unfortunately, if evidence could be provided suggesting a design fault was the cause of the claim, this still isn't an insured peril under the terms and conditions of your policy.*

*'We will not pay loss or damage claims for: The cost of repairing, replacing or renewing any defective part in consequence of a latent defect.'*

*I also understand you're unhappy with the time taken to remove your vessel from the water and subsequently believe this may have led to further damage rendering the vessel a total loss. Having discussed this matter with the claims department they have confirmed the vessel wouldn't have been repairable at the time the claim was submitted.*

*Having considered the circumstances of the incident, we are satisfied there have been no unnecessary delays from our involvement. ..."*

## **Analysis**

### ***The First Complaint***

The Complainant asserts that the Provider delayed in appointing a salvage company to raise the barge. The barge sank on a date in **August 2015**. The Complainant notified the underwriting agent of the sinking on the following day and a marine surveyor was appointed immediately. When the Complainant notified the underwriting agent of the sinking, he was advised by the underwriting agent to take all reasonable measures to minimise damage to the barge and raise it. The surveyor wrote to the Complainant one day later, advising him that he was awaiting confirmation as to the cost of the job from a salvage company he had used on a previous occasion.

While it took a number of months to appoint a salvage company and raise the barge, it is quite apparent from the correspondence outlined above, that there were a number of reasons for this. While a salvage company was initially retained to raise the barge in **August 2015**, it encountered a scheduling conflict and was unable to carry out the operation. Furthermore, the salvage was not a straightforward exercise and was somewhat complex due to the location of and access to the barge and the fact that it had become settled in silt requiring certain expertise and equipment which necessitated revised quotations. Following this, there were delays associated with gathering quotations from prospective contractors and obtaining quotations that were competitive and reasonable.

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The chosen salvage company submitted its quotation on **15 September 2015**. However, due to inadvertence on the part of the surveyor, this quotation was not forwarded to the Provider until **21 September 2015**. Finally, before the salvage works could commence, certain requirements that had to be complied with as mandated by Waterways Ireland and the Local Authority. Once the necessary permissions were given, the barge was raised at the beginning of **November 2015**.

In light of the circumstances of this complaint, I do not accept that the Provider delayed in appointing a salvage company nor do I accept that the delay in raising the barge was caused or perpetuated by the conduct of the Provider. Therefore, I do not uphold this aspect of the complaint.

### ***The Second Complaint***

The Complainant is dissatisfied with the Provider's decision to decline his claim on the basis that the barge was not properly maintained or in a seaworthy condition. I accept, having regard to the terms of the policy outlined above, that the Provider is entitled to refuse a claim if the barge was not properly maintained or in a seaworthy condition.

Following an inspection of the barge and having spoken to the Complainant and one of the occupants of the barge, the surveyor formed the view that the barge was not properly maintained nor was it in a seaworthy condition. These findings have been set out in detail above.

Contrary to this, the Complainant asserts that the barge was properly maintained. In an email to this Office dated **27 April 2017**, the Complainant advised that "[t]he boat was maintained by myself ..." The Complainant further submits that maintenance was carried out by an agent of one of the diving companies referred to above. In an email **14 April 2016**, the Complainant wrote the Provider stating: "[Agent of diving company] was known to us as we had used him to carry out maintenance to the barge." In an email to this Office dated **5 April 2019**, the Complainant advised that:

*"... the barge was in good working order. Maintenance work was carried out by [agent of diving company] for which we paid cash. It was a condition of our mooring lease from Waterways Ireland that the barge had to be maintained and able to be moved under its own power. ..."*

While the Complainant maintains the position that the barge was properly maintained, he has not provided any evidence (beyond his own statements) as to the condition of the barge when the policy was incepted or immediately prior to its sinking. Furthermore, no evidence has been produced to demonstrate that any maintenance was in fact carried out on the barge or the nature and extent of any such maintenance. I also note that no documentary evidence or written statement has been submitted in respect of the individual who the Complainant states carried out maintenance to the barge.

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Furthermore, there is no evidence that the Complainant or a suitably qualified expert inspected the barge or sought to inspect the barge in order to contradict the findings of the surveyor.

The Complainant also disagrees with the cause of the sinking, stating that the barge sunk due to a design defect as communicated to him by the surveyor during their meeting in **February 2016**.

In the email to this Office dated **5 April 2019**, the Complainant explains:

*“[The surveyor] stated that the cause of sinking was due to a design fault ie there was an exhaust outlet below the waterline which had allowed water to enter the craft and cause the rapid sinking. This was confirmed to me by [the agent at the diving company] who stated that the hull was not safe to sell on as a barge and could only be scrapped. ...”*

I consider this submission to be unsupported as the Complainant has not produced any evidence to ground this contention.

In conclusion, I accept that the Provider was entitled to decline cover, as communicated to the Complainant on **21 March 2016**. The Complainant has not produced any evidence to contradict or undermine the findings of the surveyor. Furthermore, I do not consider that unsupported submissions as to the condition of the barge and the cause of the sinking, on their own, are sufficient to maintain this complaint. Therefore, I do not uphold this aspect of the complaint.

For the reasons outlined above, I do not uphold any aspect of this complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 March 2020

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,  
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

