



Checking the **small** print



It might be a tedious process but John McCurdy explains why it is vital to take the time to check the fine print in your yacht insurance – not least to be aware of what isn't actually covered.

Isn't it always the way that you buy insurance, and then the very thing that happens doesn't seem to be covered? Or even if it's covered, you still end up having to contribute to the costs. So just what is in the small print that you need to be careful of?

It's essential that we realise that the contract of insurance is based on a truthful exchange of information between policyholder and insurer *before* the contract is actually concluded.

For the insurer, this will mean making clear what is, and what is not, covered, and how much the insurance will cost – including making you aware of any unusual conditions and any "hidden" costs. Let's take a look at some of the "hidden" costs.

Hidden costs

- Credit card charges. With credit card companies charging between 1.5 per cent and 6 per cent of the value of the transaction, many insurers will pass on some, if not all, of this cost to the customer.
- Interest charges for paying by instalments. The majority of insurers charge around 6-8 per cent for payment by instalments.
- Documentation charges. An increasing number of insurers are charging a fee every time they issue insurance documents, from first issue, to mid-term alterations, to cancellation.
- Penalties for early cancellation. Some insurers charge a flat fee if you cancel the contract mid-term, for example if you sell your boat, and some will apply a minimum premium to ensure they have covered their costs even if the policy does not run its expected course.



In a recent market review I carried out, the most extreme example could cost you almost £100 if you took out a policy, made a change to the cover (for example a change of cruising area) and then cancelled because you'd sold your boat all within the same insurance year – and that's without credit card or instalment charges! *These can be avoided.*

There are insurers who won't charge all of these, and a small number who won't charge any of them. Seek these out, asking the right questions before you take up an offer of insurance. Be careful you aren't comparing apples with pears.

Understanding the conditions of insurance

Insurance contracts are written in one of two ways – All Risks or Insured Risks. This would appear to be simple – either all risks are covered, or only those agreed are covered. But it isn't so simple.

An insured risks policy covers your boat for damage caused by any of a list of specific incidents, for example, storm, fire or collision. These policies are often the most straightforward – if it isn't listed, it isn't covered. If it is listed, look next to the exclusions to make sure no circumstances exclude the particular circumstances of a loss, for example, normal wear and tear.

Many of us understand "all risk" in relation to, say, our household policy, under which we can take out an "all-risks extension" on our personal possessions, so that they are covered for any sort of loss or damage – even just dropping your wallet. Cover for "accidental damage" is a similar condition. If something is done accidentally, it's covered, even if it was your own clumsiness – just as long as it wasn't deliberate.

Don't fall into the trap of thinking "all risks" means the same when it comes to your yacht insurance; you need to read the policy *definitions* carefully. Don't jump on the words "All Risk" without reading the rest of the insuring clause. Does it actually say "All risks of accidental physical loss or damage *caused by* ...". "Caused by" followed by a list of circumstances actually means the policy is an Insured Perils policy, not an All Risk policy. Even if the wording appears to be all risks, check whether "accidental damage" appears in the definitions sections. It may be defined there as "accidental damage caused by forcible, violent or external means", which again limits the extent of "ALL Risks".

It's not my intention to draw any conclusions about which provides better cover, Insured Risks or All Risks, and in fact there is probably little difference in the cover – just in the way the policy is worded. Don't automatically dismiss one or the other, just be aware that those terms on their own are not enough to make a sound decision about which policy is right for you.

If a policy is an All Risk policy, the insurers will need to be more careful to define exactly what they are not providing cover

for, so the list of exclusions will be longer. In an Insured Risks policy, the insurers will have taken more care to define what they want to insure, so the exclusions list will probably be shorter.

Generally speaking, your contract of insurance will cover you for things that are purely accidental and unpredictable. It is rare for insurers to cover normal wear and tear, for example, which is predictable. The policy also won't cover what are regarded as consumables. Sails won't be covered, any more than strings on a sportsman's tennis racquet would be, unless they are damaged in an unforeseeable manner. In any event, if they are past their best, you will probably have to contribute to their replacement depending on their age at the time of the damage or loss.

The generally accepted principle of insurance is to put you back in the same position after the event as you were in before the event, not to improve that position by providing new sails or covers. However, there are one or two policies that will provide you with new for old replacement with no contribution from you at the time of replacement, though you will almost certainly pay for this in the premium.

Most policies will make clear what items may be subject to a deduction on the replacement costs if you make a claim. The age at which this applies, and the amount of the deduction, may be different for each item and should also be clear. It's worth checking the wording here – does the deduction apply to parts and materials only, or to the entire claim including labour costs?

If damaged equipment can't be replaced like for like, the insurers should pay for the nearest similar replacement, but they may not be prepared to pay to replace undamaged items that have to be replaced solely because the new equipment doesn't marry with the original fittings. Also, if you decide to take the opportunity to upgrade equipment, you may have to contribute, as the insurer's liability will be like-for-like replacement.

One thing to definitely watch for in the policy wording is that some insurers reserve the right to replace the damaged part – or even the entire yacht – with another of similar age and condition. If this isn't what you want from your insurer, don't sign up to the policy!





Warranties, conditions and endorsements

As well as reading and understanding the standard text, be sure to take account of anything that is added as an endorsement, condition or warranty. Sometimes these are listed at the end of the clauses, and from the list only those specifically noted on your certificate of insurance apply to your policy. Sometimes a warranty will be written as text on your certificate of insurance.

Many people don't appreciate the legal weight of a warranty. The simplest understanding of a warranty is that it is a promise. Our knowledge of a warranty is usually in terms of goods we buy, and is a promise that if something fails within a given period of time it will be repaired or replaced by the manufacturer!

A warranty on an insurance policy is actually a promise you make, not the insurers. It is something that is foundational to the contract. If it is broken, then it is a serious breach of contract, meaning that the insurers can avoid the contract in its entirety. It relates to circumstances without which the insurers would not agree to insure you. Commonly warranties will relate to numbers or experience of crew onboard, or to maintenance or lay-up requirements. Insurers need to make warranties very clear – but you also need to be very clear what they mean, and make sure you stick to what has been agreed.

Endorsements and conditions may not carry quite the same weight in law as warranties, but they are still important parts of your contract. An endorsement is simply something which is endorsed on your policy, that is, it is added to the standard wording by being mentioned on the policy certificate. Very often these will be extensions of cover above what is provided as standard. A condition is something upon which cover is conditional – so if you had an accident and the conditions weren't met, you wouldn't be covered for that particular accident.

Although the words are not always used by insurers in exactly the correct manner, (sometimes warranties are called conditions and vice versa) in general they can be taken to mean that:

- Warranty: You have made a promise which is fundamental to the insurers' agreement to insure you. If this promise is broken, there is no contract.
- Condition: Cover for accidents is conditional on compliance with the stated condition(s).
- Endorsement: The insurers have added another clause to the standard wording, by endorsing your policy to show that this clause applies to your cover.

It would not be right to leave the subject of warranties without mentioning the greatest pit into which you can fall – that of implied warranties. An implied warranty (as opposed to an

express warranty – one that is expressly written on your contract) is one which is taken as read, even though it appears nowhere in the wording.

The most significant and fundamental of these, and which is implied in every contract of marine insurance because of the existence of the Marine Insurance Act, is the implied warranty of seaworthiness. This implies that the insured vessel is seaworthy at the start of any journey. Seaworthiness means not only that the vessel is not taking on water, but also that it is suitably equipped and manned for the proposed trip. This will be different then, when you are proposing to cross Biscay at night, from when you are meandering along the south coast of England on a sunny day. Not only must the vessel be sound, but navigational and safety equipment must be suitable for the intended passage and crew arrangements must also be appropriate depending on handling of the yacht, sea conditions, and experience of those onboard.

Another fact that insurers can rely on, whether stated in the policy or not, is that "you are expected to act as a prudent uninsured person". This simply means that you should take no less care because you have the benefit of insurance than if you didn't. If you were uninsured, you would probably make sure someone was keeping an eye on your property while you were away. If you were uninsured and your engine room was flooded with sea water, you'd want to get the engines flushed out as soon as possible. If you were uninsured and you had a grounding and were taking on water, you'd want to get the yacht lifted as soon as possible. Although you are insured, all those things will still be expected of you.

Is it unfair to rely on something which is not explicitly stated, but rather "implied"? Is it fair to rely on common sense and the expectation that owners will have due regard for the safety of themselves and their yacht?

We've looked above at the insurer's responsibilities under "utmost good faith" to make clear to you the conditions on which they are insuring your yacht. What is your side of the bargain?

Short of coming round to take a look at your boat and interview you, all an insurer can do is rely on what information you provide him with, and you will be asked to sign a statement to say that you have honestly declared all facts that you could reasonably be expected to be aware of, whether that relates to the condition and value of your boat, or to your sailing experience and claims history.

Insurers have to work on the assumption that your yacht will be typical for the make/model and year built. If that isn't the case, and you are aware of it, then you need to pass the information on to them so that they can make a correct assessment of the risks involved in insuring your yacht.



If your yacht has been modified you will need to tell your insurers, who may want to assure themselves that structural integrity has not been compromised. They will also need to be made aware if the mast is non-standard, or is high-performance and not a standard cruising mast, even if this was a selected option when the yacht was purchased new, as clearly this would increase their costs if you had a rig claim. Alterations to keel or to bowsprit are also examples of modifications that should be advised to the insurers.

If you know the boat has suffered a serious accident in the past – whether within your ownership or not – and has been subject to structural repairs, this is clearly something you should tell your insurers.

In either of the two scenarios outlined above, the insurers may ask for more information, including a survey report, before agreeing to insure your yacht. Better for this to happen, than for a claim to be turned down later because you didn't disclose the information at the outset.

On the subject of surveys, some insurers will want to see a survey before they agree to take on your yacht, whilst others may request surveys at various intervals of years. It's worth finding out what the insurer's policy is on this, as it can increase your costs later on. You may find that if the insurer can assess a survey at the outset they will not request another for several years – possibly even the lifetime of your contract with them – provided you don't have a major casualty. If you are insuring a yacht you have just purchased, it is probable that you had a survey carried out anyway. It's also worth asking whether the insurer will accept a survey carried out a year or two ago, perhaps accompanied by a note of work carried out since the date of the survey.

Instead of, or in addition to, a survey, if your yacht is not a production model, the insurers may require line drawings and details of the builders.

Insurers may ask for details of your previous boat ownership and sailing experience. They'll be looking to see how much experience – actual hours sailing – you have in the same type of yacht, cruising area and conditions that you are proposing they insure. If you have relatively little experience, they may require that you have someone more experienced on board until you have built up more hours sailing. Some insurers will give you credit for "accident-free" years sailing, even on someone else's boat, and award you an introductory No Claims Bonus, whilst others will want you to build up your No Claims years for yourself. When looking at your claims history, they will want to assess whether you've had a run of bad luck, or whether you tend to take above average risks.



"Utmost good faith" requires that both parties are open and honest about what they know and which the other party may not know. It is important to give this information truthfully, and recognise that information you think is detrimental to your case may not necessarily mean you can't get insurance. It may mean, that the insurer wants you to carry a higher excess if you are inexperienced or are racing regularly, or the insurer may want to exclude a specific item or specific risk. It is much better to be honest at the outset than to have a claim rejected later because you've withheld information you should have disclosed.

If you have disclosed everything that is known to you and that may be of significance to the insurer in deciding whether or not to insure your yacht, and if you always act towards your insurer with "utmost good faith", then you are entitled to rely on your insurer to extend the same attitude and behaviour towards you. If either party fails in their obligations, the other has every right to avoid their obligations also.

Get the foundations of your relationship right, and you should be able to rely on the relationship going forward on a good footing.

John McCurdy OBE joined Pantaenius UK Limited in 2003, after a long and distinguished career as a high-ranking officer in the Armed Forces. After an initial spell as Claims Manager, John took over as Managing Director in 2008. Pantaenius arranges bespoke insurance cover worldwide for yachts valued from £15k to £100m.