Playing with Fire: The Limits of Non-Disclosure

The recent judgment in *Cometsambre SA v Lloyd's Insurance Company SA [2026] EWHC 1837 (Comm)* provides an example of the circumstances in which an insurer may avoid a policy for a breach of the duty of fair presentation under the Insurance Act 2015.

In this case, the insurer successfully avoided a charterer's liability policy after the insured, a scrap metal dealer, failed to disclose a series of fires involving its cargo. Although none of the fires had resulted in an individual claim against the insured, the Court found that taken together, they were material as they indicated a significant change in the underlying risk profile. The Court concluded that had these incidents been disclosed, Lloyd's would not have renewed the policy.

Background

Cometsambre, a Belgian scrap metal shipper, held Charterer's Liability Insurance with AMICA, acting for Lloyd's. The policy was renewed on substantially similar terms from 2010 to 2022.

Between 2020 and 2021, Cometsambre experienced five fires; three on chartered vessels and two in quayside stockpiles, which were not disclosed at renewal. A further fire aboard the *Lowlands Mimosa* in June 2022 led to a substantial charterparty claim against Cometsambre who sought indemnification of the claim under the Charterer's Liability Policy. Following its investigation, AMICA discovered the earlier incidents and Lloyd's declined cover for failure to make a fair presentation of the risk.

Issues before the Court

The dispute centred on the scope of the insured's duty of fair presentation under the Insurance Act 2015 (IA 2015) and whether a circumstance is material and should be disclosed.

In particular, the Court considered four key issues:

1. **Materiality:** whether the fires constituted "material circumstances" which would influence the judgment of a prudent insurer in deciding whether to write the risk and the terms on which it would do so (ss.3(4) and 7(3) IA 2015).

2. **Knowledge and the scope of the duty to disclose:** whether Cometsambre knew or ought to have known about the fires, and if AMICA knew, or could reasonably be expected to know, of them. This also required the Court to consider if the information provided by Cometsambre was sufficient to put AMICA on notice that it should make further enquiries (ss.3(4), 3(4)(b) and 5(3)).

3. **Waiver:** had AMICA's conduct waived their right to disclosure by failing to request further information or updated questionnaires at renewal (s.3(5)(e)).

4. **Inducement:** whether the non-disclosure induced AMICA to enter into the 2022 renewal, such that it was entitled to avoid the policy (s.8).

The Court's Decision

Mr Justice Butcher held that the non-disclosure had induced the underwriting of the policy and that Cometsambre had failed to discharge its duty of fair presentation. Lloyd's was entitled to avoid the policy and render a return of the premium.

On the key issues the Court found as follows:

Issue 1: Materiality

Cometsambre alleged that the fires were not material on the basis that (i) the fires had not previously resulted in a claim; and (ii) quayside fires are irrelevant to a Charterers' Liability Policy.

The Court rejected this argument. It accepted the underwriting evidence that fires were a *"paradigm example"* of an incident capable of giving rise to a claim. As the Court noted, *"where a fire occurs in scrap metal at a port awaiting loading, a prudent underwriter would recognise that the same fire could have occurred once the cargo was on board the vessel."*

The Court also considered the occurrence of five fires within approximately 18 months, following 12 years without any fires, to be significant as it indicated a change in the risk profile. The fact that none of the incidents had resulted in a liability claim did not make them immaterial. What mattered was their potential to influence the judgment of a prudent insurer when assessing the risk.

Issue 2: The Insurer's knowledge and the Insured's continuing obligation to disclose

Cometsambre argued that, by informing insurers that it shipped HMS scrap, which carries an inherent fire risk, it had provided sufficient information to put a prudent underwriter on notice to make further enquiries. It also argued that the insurer's failure to request further information at renewal meant that it was effectively on notice of the relevant circumstances.

The Court rejected this as an improper attempt to reverse the burden of the duty of fair presentation. The insurer's failure to ask a particular question did not transfer responsibility to the insurer where the insured itself knew of circumstances that materially altered the risk. The Court found that Cometsambre had initially presented its cargo as *"clean, non-oily, non-dangerous"* and that a prudent underwriter would therefore have understood it to be an IMSBC Group C cargo without any special hazards. Consistent with this, Cometsambre had declared its cargoes as Category C when making declarations under the IMSBC Code. The underwriter would therefore have expected a low risk of fire and could not reasonably have been expected to know about the frequency of fires experienced by Cometsambre.

Cometsambre also could not rely on the insurer's presumed knowledge. While an underwriter may be presumed to know matters that can reasonably be expected to be known within the relevant

class and field of insurance, this did not extend to knowledge of Cometsambre's specific fire history or the marked increase in the frequency of fires.

Issue 3: No Waiver of Disclosure

The Court also rejected the argument that AMICA's failure to issue fresh questionnaires at each renewal amounted to a waiver of disclosure. The fact that the original questionnaire referred to the insured's *"claims record"* did not reasonably suggest that AMICA was only interested in incidents that had resulted in claims. Similarly, its lack of detailed enquiries at renewal did not indicate that it was indifferent to other material changes in the risk.

The Court also noted that the original questionnaire had been prepared by Cometsambre's broker rather than AMICA. The information provided therefore reflected what Cometsambre had chosen to disclose rather than information specifically requested by the insurer.

The Court emphasised that an insurer's failure to ask a particular question is not the same as waiving its right to receive material information. The two are not synonymous.

Issue 4: Inducement

Finally, AMICA had to establish that, had Cometsambre made a fair presentation of the risk, it would not have entered into the 2022 policy on the same terms or at all.

The Court acknowledged the need for caution when assessing an underwriter's evidence of what they would have done, given the risk that hindsight following a loss may influence such evidence. However, it accepted the underwriter's evidence that he would not have renewed the policy at any premium had the fires been disclosed.

The Court also distinguished the insurer's treatment of another insured, BST, where two fires had been disclosed and the policy was nevertheless renewed. In that case, BST had been transparent about the incidents, a surveyor had found no issues with the quality of the cargo and BST was paying a premium approximately six times higher than Cometsambre.

The Court therefore accepted that disclosure of the fires would have led the underwriter to decline renewal. Lloyd's had established the necessary inducement and was entitled to avoid the policy under paragraph 4 of Schedule 1 to the Insurance Act 2015.

CPB Comment

This is a relatively unusual example of the Court ruling in favour of an insurer in a non-disclosure case under the Insurance Act 2015. The judgment offers several practical lessons for both insurers and insureds.

Firstly, a clean claims history can make a change in risk more significant. Cometsambre had gone around 12 years without any fires before experiencing five within 18 months. The Court viewed this pattern as evidence of a changing risk profile rather than simply a continuation of the existing risk.

Secondly, knowledge of the general nature of a risk is not the same as knowledge of the insured's specific experience. Cometsambre had told AMICA that it shipped HMS scrap, but this did not put the insurer on notice that it had experienced a significant increase in fires. Insureds should therefore not assume that disclosing the general nature of a risk is sufficient.

Thirdly, silence from an insurer does not necessarily amount to waiver. AMICA's failure to issue fresh questionnaires did not mean that it had waived its right to receive material information. However, insurers should be mindful that their questions and renewal practices do not create the impression that particular information is not required.

Finally, inducement requires evidence rather than hindsight. The Court approached the underwriter's evidence of what he would have done with caution, given the risk of hindsight following a loss. Lloyd's succeeded because that evidence was supported by objective factors, including the low premium, the potential exposure and the deterioration in the risk profile.

Overall, the decision is particularly interesting given the relatively small body of case law on the Insurance Act 2015. Lloyd's did not win simply because Cometsambre had failed to disclose the fires, this case shows that, although the evidential hurdle for insurers remains high, a clear and well supported underwriting case can ultimately justify avoidance.

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Any questions

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