DRN-3856814

The complaint

Mrs D and Mr D complain about Watford Insurance Company Europe Limited's decision to decline a claim made under their landlord insurance policy.

What happened

Mrs D and Mr D have a landlord insurance policy underwritten by Watford which covers buildings and contents, amongst other things, for a property they own and rent out.

They made a claim in January 2022 after discovering that tenants had set up a cannabis farm in the property causing extensive damage.

Watford declined the claim. They said Mrs D and Mr D's policy covered them for malicious damage caused by tenants, but there was an exclusion for damage or loss caused as a result of building alterations, renovations or repair.

They said the claim Mrs D and Mr D were making was for damage caused when the tenants carried out alterations to the home. And this damage wasn't covered because the exclusion applied.

Mrs D and Mr D weren't happy with this and made a complaint to Watford, but they maintained that the exclusion had been properly applied and the damage wasn't covered.

Mrs D and Mr D then brought their complaint to us. Our investigator looked into it and upheld the complaint. He said the exclusion relied upon by Watford was unfairly restrictive and worded ambiguously.

He thought Watford should pay for the required repairs or reimburse Mrs D and Mr D (adding interest at 8% simple) if the repairs had already been carried out and paid for.

Watford disagreed and asked for a final decision from an ombudsman.

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.

We take the view that any damage caused when tenants set up a cannabis farm in a property is malicious damage. That damage is caused intentionally and is intended to cause harm.

When Mrs D and Mr D took out the policy, they decided to add optional buildings cover specifically for accidental or malicious damage and theft by tenants.

There's no dispute in this case that the tenants at Mrs D and Mr D's property caused malicious damage by setting up the cannabis farm. For example, they added lights and ventilation to aid the growing of the plants which caused damage to the structure of the house.

Watford's analysis of the claim is correct then, in so far as it brings us directly to the relevant section of the policy – the optional cover for malicious damage by tenants. The dispute is about the meaning of the exclusion set out in that section which applies to loss or damage caused by the tenants:

> *"As a result of any building alterations, renovations or repairs…"*

Our investigator thought this clause was unfairly restrictive because if we take the widest definition of the word "alteration" then *any* damage is by definition an alteration and would not be covered. For example, damage caused by a brick thrown at a wall in an act of wanton vandalism is an "alteration" to the wall.

If we accept that, the supposed cover provided here – and paid for by the policyholder - would in fact cover nothing at all. Which would be unfair.

Watford's response to this argument was that the cover is meaningful because cover would be provided if the tenants had simply "*smashed up*" the property.

By implication, I believe Watford are saying that cover caused in essence for its own sake *is* covered, but where an alteration to the property is carried out for some wider purpose – for example, growing cannabis – then the exclusion applies and there is no cover.

Whilst this is an interesting semantic or philosophical argument, I think what it does show is that the wording of the exclusion as it is set out in the policy is not entirely unambiguous.

If I put myself in the position of a potential purchaser of the policy, I might be inclined to read the exclusion to mean that alterations such as knocking through walls to create an open plan space or to remove fireplaces or cornices, for example – would not be covered.

I might also be inclined to think that criminal damage to create a suitable environment for drug production, for example, *would* be covered. That's not a home "*alteration, renovation or repair*", it's criminal and malicious re-purposing of the property without regard for the damage caused.

In my view, that's the most natural reading of the meaning of the exclusion. It's certainly one reasonable and justifiable reading of it. And that means the exclusion as set out in the policy is in fact, at best, ambiguous.

Our view is that where there is ambiguity in a policy term, it's usually fair to interpret that term in the way most beneficial to the policyholder rather than the insurer. That's because it's the insurer who writes the policy terms - and they are the expert in this situation, not the policyholder.

The insurer, in other words, should be expected to accept responsibility for any way in which the customer may have been misled (even if inadvertently) by a lack of clarity in the policy wording.

It's important to note here that Watford aren't obliged to offer policies which will cover damage caused by the setting up of cannabis farms.

If the policy had explicitly said that such damage wasn't covered, then no-one could have been in any doubt about the meaning of the policy terms.

Some policies explicitly exclude damage caused by illegal activity – again, this is a fairly unambiguous way to set out what the policy will and will not cover. I note that Watford include that kind of exclusion in this policy - but it's restricted to any illegal act carried out by the policyholder and/or their family (not tenants).

Other policies exclude damage caused by someone who is lawfully in the property. That exclusion isn't included in this policy. Which is unsurprising, I suppose, given that there is the option to take additional cover specifically to insure against damage caused accidentally or maliciously by tenants.

In summary, I'm satisfied that on balance the policy term on which Watford sought to rely in declining Mrs D and Mr D's claim is ambiguous. Read in one way, the exclusion would apply in this case. Read in another – perfectly reasonable and justifiable – way, it would not. And that being the case, it would be unfair for Watford to decline the claim on that basis.

I believe Watford *intended* to exclude this kind of damage. But I'm also satisfied that they could have realised that intention by setting out what they meant in clear and unambiguous terms. That they failed to do so is their responsibility, not their policyholder's.

Putting things right

I'm not sure whether Mrs D and Mr D have as yet had the necessary repairs to the damage caused by their tenants carried out or not.

If they have not, then Watford must accept the claim and carry out or pay for the repairs in line with the remaining policy terms.

If they have had the repairs carried out, Watford must reimburse them – on receipt of invoices or other proof of payment – and add 8% simple interest calculated from the day(s) Mrs D and Mr D paid for the repair work to the date Watford make this payment.

My final decision

For the reasons set out above, I uphold Mrs D and Mr D's complaint.

Watford Insurance Company Europe Limited must:

- carry out or pay for the repairs to Mrs D and Mr D's property; or
- if those repairs have already been carried out, reimburse Mrs D and Mr D their costs, on receipt of acceptable proof of payment, and add interest at 8% simple from the date Mrs D and Mr D paid for the work to the date Watford make this payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 18 January 2023.

Neil Marshall
Ombudsman