

The complaint

M complains about how MSIG Europe SE wants to settle a claim he made on his commercial buildings insurance policy.

Reference to MSIG includes its agents.

M has also been represented in bringing this complaint. So for ease of reading, I'll refer to M and his representative as M.

What happened

M holds a commercial buildings insurance with MSIG. When he noticed his property had been damaged by the tenant using it to grow cannabis, he made a claim for the damage caused.

Ultimately MSIG accepted M's claim. But it said malicious damage caused by the tenant had a limit of £5,000 cover. So it said this was the most it would pay on the claim.

M didn't think this was fair on a number of grounds. Primarily it didn't think the damage was malicious and so didn't think the £5,000 applied. But it also noted other areas of cover, such as debris removal, fly tipping, loss minimisation, fire extinguishers, replacement locks, unauthorised use of public utilities and additional water charges were separately covered in the policy and therefore shouldn't be subject to the £5,000 limit MSIG was applying.

MSIG said it was satisfied the damage was malicious and that the £5,000 limit in the policy applied. It said replacement locks and the costs submitted in relation to loss minimisation wasn't covered. It agreed to pay for debris removal and offered to pay a further £260 to reflect this.

M wasn't happy with this and brought his complaint to the Financial Ombudsman Service. He said much more should be considered under debris removal, such as the removing of the ducting the perpetrators had installed at his property.

Our Investigator recommended M's complaint be upheld. They didn't think it was fair to apply the £5,000 limit to the debris removal and thought much of the costs submitted by M could be fairly deemed as debris removal.

M agreed with that assessment, but wanted further clarification on the other aspects of cover MSIG had declined to provide.

MSIG didn't accept our Investigator's assessment. It didn't think it was fair to deem most of the costs submitted as debris removal.

Because no agreement was reached, the case came to me for an Ombudsman's decision.

I wrote a provisional decision upholding the complaint which said:

"In line with our role as an informal service, I'll not be commenting on each and every

argument raised or bit of evidence submitted. Instead, I'll focus on what I consider to be key.

The policy provides M cover for a number of things. One of those things being damage. It says:

"We will at our option pay for, repair or reinstate any property insured that sustains damage at the premises directly caused by any of the covers listed below provided they are shown as applying in the schedule.

Our liability in any one period of insurance will not exceed:

- 1. the total sum insured;*
- 2. in respect of any item its sum insured; or*
- 3. any other stated limit of liability."*

From this, I find it clear that if damage occurs to M's property as a result of a number of specified causes, MISG will pay for, repair, or reinstate the property.

There are then a list of covers, 14 in total. The only one which reasonably applies to this claim is the following:

"Riot, civil commotion, strikers, locked out workers or persons taking part in labour disturbances or malicious persons but not damage arising from

- i) confiscation, requisition or destruction by order of the government or any public authority.*
- ii) stopping work.*
- iii) fire caused by strikers, locked out workers or persons taking part in labour disturbances or malicious persons.*
- iv) theft or attempted theft directly caused by malicious persons to any building which is unoccupied.*
- v) damage caused by tenant(s)."*

Of relevance here is the fact that the policy provides cover for damage caused by malicious persons, but does not under this term provide cover for any damage caused by the tenants. Clearly an important point here, because it's accepted that the tenants caused the damage being claimed for.

But, further down in the policy there are a list of "Extensions to Cover". Here, a number of sections M thinks mean MSIG should pay more on his claim. I'll address those a bit later. But for now, the relevant one to highlight is:

"Tenants damage

We will pay for damage, including malicious damage and theft, caused by the tenant to the buildings or landlords contents.

However we will not cover:

i) any amount recoverable by you from the deposit paid by the tenant as detailed on the tenancy agreement (proof of deposit payment must be submitted following a claim);

ii) damage which is insured by a policy issued to the tenant.

We will not pay more than £1 ,000 for any one loss by theft or £5,000 for any one loss resulting from malicious damage.”

So, from this extension it's clear that damage caused by the tenant, including but not exclusively malicious damage is covered by the policy. What's of key importance here then is that if the damage is deemed to be malicious damage, it is subject to a £5,000 limit. If it's not malicious and is simply damage, then it is covered, but not limited to £5,000 (but will be subject to the wider limits set out above).

So, what I need to decide is whether it was fair for MSIG to deem the damage, caused by the tenants by way of altering the property to allow them to grow cannabis, malicious damage.

I'm satisfied it was. Our Service has a consistent approach on such matters. And that approach is that such damage is fairly deemed malicious. Usually this dispute comes about where the insurer declines the claim on the basis it isn't malicious. And I appreciate here the argument is reversed. But I'm not persuaded that changes our approach or my consideration of whether the damage was malicious or not.

I understand M's point in that for damage to be malicious there needs to be an intent to do harm. And he's said there was no intent to do him harm, and that the harm was a byproduct of the tenants transforming the property to allow them to grow cannabis.

But I'm not persuaded by that argument. I find the tenants knew full well of the harm that their actions would cause, and decided to take those actions anyway.

So, with that in mind, I'm satisfied that MSIG is entitled to apply the £5,000 limit to the damage caused by the tenants in turning the property into a cannabis farm. But I've emphasised damage in that last sentence for a reason. And that is because I think other areas of the policy do provide additional cover, and that that cover is not subject to the £5,000 limit.

As mentioned above, there are a number of additional covers, 31 in total. Some of these have no specific limit at all, some do, but there's a number of different limits. That to me is a clear sign then that each area of additional cover's limit, applies only to that section.

So to bring that to light, another additional cover is "Debris removal". There's no specific monetary limit on this area of cover, rather the cover is limited as follows:

"We will not pay

more than the sum insured for each item.

ii) for any costs or expenses

a) incurred in removing debris except from the site of property damaged and the area immediately adjacent to it;

b) arising from pollution or contamination of property not insured by this policy; or

c) in respect of damage which occurred before the granting of cover under this insurance.”

So I’m satisfied it’s these limits that apply to this section, not the £5,000 limit under a different section of the policy.

So, in addition to paying up to £5,000 in relation to putting right the damage caused by the tenant. MSIG should pay for the debris removal.

But what makes up debris removal is also in dispute here. With M claiming for much higher costs than MSIG is willing to pay for. So, what does the policy say? It says:

“We will pay for costs and expenses you necessarily incur with our consent for

a) removing debris from,

b) dismantling and/or demolishing,

c) shoring or propping up of

d) clearing, cleaning or repairing services to

those parts of the property insured damaged by any cover insured.

2 We will pay for costs and expenses necessarily incurred with our prior consent for the removal of tenant(s) contents at the property insured”

I find the above term poorly written. Point a) above is listed as its own point, when it should, I think, form part of the sentence above. But I’m satisfied the intention of the term is clear enough. And that is that the policy provides cover for the a) removal of debris which is there as a result of points b, c and d. it also provides cover for the removal of the tenants’ contents.

So, here, I don’t think the removal of the ducting from the walls for example is covered under this part of the policy, I think that’s more fairly covered under the damage by tenants section and subject to the £5,000 limit. But I am persuaded that the cost to then remove this ducting from the property (once removed from the walls) is covered under this section.

So it’s with this principle that I think MSIG should assess the M’s claim. The £5,000 limit applies to putting right the property in terms of repairing/reinstating the property. But on top of that, it should pay for any removal of debris created in that repair process in line with the ducting example set out above.

It’s also clear that the removal of tenants’ contents should be covered, so costs relating to items which are clearly contents such as the beds left, should be included in the settlement and not subject to the £5,000 limit.

For clarity, I don’t consider the ducting to be contents, nor do I consider the installed shower to be contents – these are clearly more suitably treated as part of the building. But their removal (the cost of taking them out of the property, not the cost of detaching them from the property) should be covered and not subject to the £5,000 limit.

There’s a key part of cover here which MSIG hasn’t raised, and that is that for cover to apply, its consent is needed. But it’s not raised that, and therefore I don’t think it would be reasonable for it to do so at this point to refuse a claim for this.

Turning to other areas of extra cover M thinks MSIG should be paying it for.

I can't see that MSIG addressed additional water charges, unauthorised use of public utilities, fly tipping or fire extinguisher costs, or that these costs have been presented to it to assess. However as above, these are all separate areas of cover, so any claim against them would be subject to the limits of each area (or the wider policy limit if there isn't one). I don't think they would be subject to the £5,000 limit in the damage by tenants sections for the same reason as set out above.

Turning to the replacement locks, the policy says:

"We will pay for the reasonable expenses necessarily incurred in replacing locks to the buildings or safes or strongrooms in them for which you are responsible consequent on

a) the theft of keys; and

b) reasonable evidence that the keys have been duplicated by an unauthorised person.

We will not pay more than £5,000 any one loss."

MISG said there's no evidence that the keys were duplicated by any unauthorised person, so no cover applies here. And from what I've seen, I'm satisfied that finding and reasoning is fair.

Looking into M's claim for loss minimisation and prevention expenditure. The policy says:

"We will pay for costs and expenses incurred by you with our consent for the sole purpose of avoiding or diminishing the amount of a loss following damage which but for that expenditure would have occurred.

We will not pay more than £25,000 any one loss."

MSIG says no cover is provided here because the property was already damaged here and the steps taken did not prevent any further loss occurring. Again, I'm satisfied that's a reasonable explanation and a fair reason to not provide cover here. There's no evidence to support that the steps taken prevented a further loss from occurring."

To put things right I recommended MSIG:

- Treat the damage as malicious damage caused by the tenants and apply the £5,000 limit in that section of the policy to the damage caused and the costs to put that right.*
- On top of the above and not subject to the same £5,000 limit, it should assess the claim for debris removal on the principle set out above and pay for the costs that become covered by it, with interest*.*
- Assess any claim by M under the fire extinguishing, fly tipping, additional water charges and unauthorised use of public utilities sections should costs be submitted. These too would not be subject to the £5,000 limit in the damage by tenants section, but would be subject to any limit set out in each respective section.*

Ultimately, MSIG agreed to that decision.

M responded in detail. In summary it wanted clarification of a number of other sections of the policy and whether anything could/should be claimed/paid under these sections. It said it thought dismantling the ducting should be covered because it said the policy wording was unclear. And it wanted clarification of what MSIG would need to pay/what it could claim for

under the debris removal section of the policy following my provisional 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.

Based on everything I've seen, my final decision will be the same as my provisional one in both reasoning and outcome.

It's worth pointing out here at this stage that my role, and this Service's role is not to handle claims, it's to resolve complaints. So much of what M has submitted in its response to my provisional decision isn't for me to comment on here. I can't consider a complaint that's not been made, let alone a claim that's not been made. Anything that's not been claimed for, that M thinks is covered under the policy, it should claim for should it wish to. MSIG would then need to assess that claim. If M isn't happy with any decision MSIG reaches, it can complain, and, if that complaint remains unresolved, it can bring that complaint here.

Similarly, it's not my place to, in the scope of this complaint set out what MSIG should pay for in respect of the debris removal. I've set out the principle in which it should assess that claim in my provisional decision. So MSIG should now look through the costs submitted by M and assess them against the principle I've set out above.

I've taken on board M's comments about the debris removal term being unclear, but this is addressed in my provisional decision. I've not been provided anything to make me change my thoughts on that.

Putting things right

MSIG Europe SE should now:

- Treat the damage as malicious damage caused by the tenants and apply the £5,000 limit in that section of the policy to the damage caused and the costs to put that right.
- On top of the above and not subject to the same £5,000 limit, it should assess the claim for debris removal on the principle set out above and pay for the costs that become covered by it, with interest*.
- Assess any claim by M under the fire extinguishing, fly tipping, additional water charges and unauthorised use of public utilities sections, or any other section of the policy should costs be submitted. These too would not be subject to the £5,000 limit in the damage by tenants section, but would be subject to any limit set out in each respective section.

*Interest should be applied at a rate of 8% simple per annum. It should be calculated from the date MSIG declined to cover these costs, to the date it makes any settlement of them to M. HM Revenue & Customs may require MSIG Europe SE to take off tax from this interest. If asked, it must give M a certificate showing how much tax it's taken off.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. MSIG Europe SE should now take the actions set out in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 1 December 2025.

Joe Thornley
Ombudsman