

## The complaint

Mr and Mrs C complain that Society of Lloyd's trading as Lloyd's of London declined their claim for malicious damage on their property insurance policy.

## What happened

Mr and Mrs C had a property insurance policy that was underwritten by Lloyd's. This was for a property they owned and rented out to a tenant. In May 2022 they made a claim for malicious damage after attending the property and finding a cannabis farm had been set up.

Lloyd's declined the claim. It said the following exclusions to the malicious damage cover applied:

*'c) for loss or damage which your lodgers or tenants have caused, allowed, chosen to overlook or not reported to the police*

*d) for loss or damage caused by any person lawfully on the premises*

*e) for loss or damage unless involving forcible and violent entry to or exit from the property or by deception.'*

It said that the damage had been caused by the tenant and therefore cover wouldn't be provided under the policy.

Mr and Mrs C disagreed with this. They said when they attended the property in May they found a person who wasn't the tenant and therefore were there unlawfully. And they said there was evidence of forced entry to the back door, so they didn't think the exclusion had been fairly applied.

They made a complaint but Lloyd's didn't uphold it so they brought it to this service.

Our investigator thought Lloyd's had acted fairly by declining the claim. He said while he didn't agree the individual was there lawfully, he thought it was most likely the tenant knew about the use of the property and allowed it, so thought the exclusion would apply.

Mr and Mrs C didn't agree. They said it was clear that the person who was at the property when they inspected it was there unlawfully and had broken in. And Lloyd's had failed to properly assess the evidence they'd provided to prove this.

Lloyd's agreed with the outcome. However it thought that exclusion 'd' relating to a person lawfully on the property, would also fairly apply as they said Mr and Mrs C had initially said the damage was caused by the tenant, and they had no reason not to take their first account.

As agreement hasn't been reached, the matter has come to me to decide.

## **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.

It isn't the role of this service to decide what happened in the circumstances of a claim. Instead, it's for us to consider the action taken by the insurer and decide if it has acted fairly and reasonably.

When an insurance claim is made, it's for the insured to show that an insured event has taken place – that's something that is covered by the policy. Then it's for the insurer to either accept the claim or show that an exclusion applies. Here Lloyd's has said the following three exclusions would apply:

*'c) for loss or damage which your lodgers or tenants have caused, allowed, chosen to overlook or not reported to the police*

*d) for loss or damage caused by any person lawfully on the premises*

*e) for loss or damage unless involving forcible and violent entry to or exit from the property or by deception.'*

However for me to say it has fairly declined Mr and Mrs C's claim I only need to be satisfied that one exclusion fairly applies. As that's enough to say the claim wouldn't be covered.

Here, there has been a lot of disagreement about whether the cannabis farm was set up by a person who was lawfully on the premises and whether they used forcible entry to gain access to the property. However if I'm satisfied the first part of the exclusion applies – 'c' above – then this would be enough for me to say Lloyd's acted fairly by declining the claim overall.

I've considered the series of events that's been described by Mr and Mrs C. They've explained that for many months they had been in touch with their tenant by phone but he had been evasive when they'd tried to arrange any visits to the property. And he had often said he was away on holiday, including when they visited in May 2022. In spite of this the tenant continued to pay rent and even expressed interest in extending the tenancy for another 24 months.

Based on this it seems most likely that Mr and Mrs C's tenant was at the very least aware of the illegal activity happening at the property. As he didn't want visits to take place for some time before the discovery of the farm, but was happy to continue the tenancy. And if he hadn't been aware of the activity it seems most likely that he would have allowed Mr and Mrs C to visit or for their appointed estate agents to attend to value the property. I therefore think this is enough to fairly say that even if the tenant wasn't present at the time of the discovery of the damage, the tenant allowed the activity to take place. So I think Lloyd's has done enough to show that exclusion 'c' above applies and therefore has acted fairly by declining the claim.

Because I'm satisfied that exclusion 'c' fairly applies, I've not gone on to consider the other exclusions, as this alone is enough to say Lloyd's fairly declined the claim.

## **My final decision**

For the reasons I've given, I don't uphold Mr and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 1 August 2023.

Sophie Goodyear  
**Ombudsman**