DRN-3672500

The complaint

Mrs B has complained that The National Farmers Union Mutual Insurance Society Limited (NFU Mutual) has voided the insurance policy she took out for her horse on the ground that she had made misrepresentations to it when taking out the policy. She has also complained about being charged for NFU Mutual's investigation.

What happened

Mrs B bought a horse, which I'll refer to as "S", on 5 June 2021. She says S had passed a two-stage vetting process and came with a clean bill of health and previous veterinary history. He was insured by the previous owner until 11 June 2021.

Mrs S say that S was unsettled and at around 08:50am on 18 June she booked him in for a gastroscopy check on 5 July as her veterinary practice was offering these at a discounted price. Mrs B denies that she had any concerns with S's health when she booked the appointment. However the vet has confirmed that S was booked in as Mrs B felt he was "girthy and resented being groomed".

At around 09:25 the same day, Mrs B insured S with NFU Mutual. In her application she stated that S had no health issues.

On 2 July 2021, Mrs B contacted the vet and said she was concerned as S objected to having his saddle fitted. S was diagnosed as having stage 4 gastric ulcers. Mrs B paid the vet's bill and says that she was advised by the vet to make a claim on her policy.

Mrs B contacted NFU Mutual and a claim form was sent to the vet on 6 July 2021. NFU Mutual asked for invoices and a copy of S's clinical history. The completed claim form was received the following day. Information from the vet wasn't received until18 August.

As Mrs B had contacted the vet on the same day she took out her insurance, NFU Mutual appointed loss adjusters to investigate and take statements from Mrs B, the vet and S's saddler.

Following the investigation, an NFU Mutual Policy Validation Officer (PVO) wrote to Mrs B on 11 October to advise that based on all the evidence available she had made a material and reckless misrepresentation when applying for her policy as S had a pre-existing condition. The PVO confirmed that they believed Mrs B had been reckless rather than deliberately trying to deceive it regarding the claim. Her policy was therefore voided from its inception. The premiums she paid were reimbursed. NFU Mutual says that Mrs B had never withdrawn her claim.

The PVO also confirmed that certain costs and expenses incurred as part of its investigation wouldn't have been incurred had the claim not been made and presented in the way that it had been. NFU Mutual is therefore seeking to recover the sum of £858 for the loss adjusters' investigation. It referred Mrs B to the terms and conditions of her policy under *"General Conditions" which state:*

Fraud and misrepresentation

If YOU or anyone acting for YOU:

1 makes a claim which is fraudulent and/or intentionally exaggerated and/or supported by a fraudulent declaration, statement or other device; and/or

2 intentionally misrepresents, misdescribes or withholds any material fact relevant to this insurance;

WE will not pay any part of YOUR claim or any other claim which YOU have made or which YOU may make under the POLICY and WE will have the right to:

1 avoid, or at OUR option cancel, the POLICY and all other policies YOU have with US without returning any premium that YOU have paid;

2 recover from YOU any amounts that WE have paid in respect of any claim, whether such claim was made before or after the fraudulent claim; and

3 refuse any other benefit under the POLICY

I am assuming that NFU Mutual relies upon the second "2" above to reclaim what it has paid its loss adjusters.

Mrs B accepts that her claim won't be honoured by NFU Mutual, but she is upset that her application has been found to be reckless. She says she was expecting a simple "yes" or "no" answer when she submitted her claim. She's also unhappy that she's been asked to pay NFU Mutual's investigation costs which she thinks could've been avoided and she can't afford to pay this sum. She wants the investigation costs to be waived. She would also like her record cleared so she can obtain insurance in the future. She brought a complaint to this service.

Our investigator's view was that as NFU Mutual already had information from the vet on 16 August, that meant the claim wasn't covered and any further questions could've been asked without the need to incur costs. She considered the further costs incurred to "validate the claim" were unnecessary and therefore Mrs B shouldn't be liable to reimburse these.

NFU Mutual didn't agree with our investigator's view. It referred to inconsistencies in Mrs B's explanation of events and the evidence that supported its view that S's condition had pre-existed the policy's inception. It's said that at the point of instructing the loss adjusters to investigate it couldn't be certain as to whether a fraud had been committed, and the claim hadn't been withdrawn. It also said that the costs it incurred in investigating the claim wouldn't have been incurred if a) the claim hadn't been made, b) accurate information had been provided by Mrs B when she took out the policy or reported the claim or c) Mrs B had withdrawn the claim prior to the appointment of the loss adjusters.

It asked that the complaint be referred to an ombudsman. It was passed to me to make a final decision from this service. I issued a provisional decision as although the ultimate outcome I recommended was the same as our investigator's, it was for different reasons.

In response to my provisional decision I received further comments from NFU Mutual and from Mrs B which I'll refer to below.

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.

Having done so I'm confirming my provisional decision and I'll explain why. In my provisional decision I stated as follows:

“Firstly I’ll consider whether it was fair and reasonable for NFU Mutual to void Mrs B’s policy from inception. I’ll then consider NFU’s claim against Mrs B for reimbursement of its investigation expenses.

The voiding of Mrs B’s policy

Following the submission of Mrs B’s claim, NFU Mutual asked S’s vet for his clinical records. These weren’t provided until 16 August. On 19 August 2021, having reviewed the information it had received from the vet, NFU Mutual took the view that it was unable to make a decision in respect of the claim under the policy terms with the information it had. It therefore appointed loss adjusters to investigate further. I consider that to be reasonable. I disagree with our investigator that NFU Mutual had all the information it needed after it had received the vet’s records and that further investigation was unnecessary.

I’ve seen the report prepared by NFU Mutual’s appointed loss adjusters who took account of what Mrs B had said about the background to her claim when reporting it, an interview it conducted with her, and what S’s vet had reported. The report was provided on 8 September 2021 and concluded that Mrs B had misrepresented the first date symptoms were noted in order to obtain cover.

The relevant law in cases involving misrepresentation is The Consumer Insurance (Disclosure and Representations) Act 2021 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care, the insurer has certain remedies provided that the misrepresentation is what CIDRA calls a “qualifying representation”. For it to be a qualifying representation the insurer has to show it would’ve offered the policy on different terms, or not at all, if the consumer hadn’t made the misrepresentation. The remedy available to an insurer depends on whether the misrepresentation was careless, reckless, or deliberate.

I consider that it’s reasonable for NFU Mutual to have relied upon an investigation and a report by independent loss adjusters and their conclusion that there had been a reckless misrepresentation.

I now need to consider if this was a qualifying misrepresentation, which involves considering first whether Mrs B took reasonable care when providing her answer to the question asked at inception about S’s health, and then whether this would have made any difference to the terms of cover offered.

I don’t consider that Mrs B took reasonable care not to make a misrepresentation. The vet has confirmed that on 18 June, just before she took out the policy, S was booked in for a gastroscopy check as Mrs B felt he was girthy and resented being groomed. Mrs B had also been in touch with S’s previous owners to enquire about his health. This suggests that Mrs B had some concerns, although at that stage there was no diagnosis. Mrs B shouldn’t in these circumstances have confirmed when taking out the policy, that S had no conditions or illnesses. Had NFU Mutual been aware of S’s pre-existing condition it would not have offered cover on the terms offered, or at all.

I’m therefore satisfied that Mrs B’s misrepresentation was a qualifying one under CIDRA.
Under CIDRA, if the qualifying misrepresentation is deliberate or reckless, the insurer can avoid the policy and refuse all claims and need not return any premium paid.

If the qualifying misrepresentation is careless, and the insurer wouldn't have provided the insurance on any terms, it may avoid the policy and refuse all claims, but it must return the premium paid.

NFU Mutual has voided the policy and returned Mrs S's premium. It has followed the course of action dictated by CIDRA for careless misrepresentation.

My conclusion is that I don't consider that NFU Mutual has acted unfairly by voiding Mrs B's policy from its inception and not paying her claim for S's treatment. I consider it has acted fairly in refunding her premium.

Reimbursement of investigation costs

Turning to the other limb of Mrs S's complaint, that she reimburse the costs incurred by NFU Mutual in conducting an investigation, I'm proposing to uphold Mrs B's complaint.

The reason for doing so is that having looked carefully at the terms of Mrs B's policy, I can see nothing within it which in my view gives NFU Mutual a right to recover investigation costs. I have referred above to the section headed "*Fraud and misrepresentation*" which I believe NFU Mutual relies upon to make its claim against Mrs B, specifically the words

"*We may…..recover from YOU any amounts that WE have paid in respect of any claim, whether such claim was made before or after the fraudulent claim;"*

I consider that his wording applies to any payment made by NFU Mutual to a customer towards settlement of a claim made by a customer. I don't consider it is intended to cover costs incurred by NFU Mutual in investigating a claim. Had it been intended to cover such costs it could easily have included wording to say so, such as the inclusion of the words "*or incurred".*

I therefore don't consider that it's fair or reasonable for NFU Mutual to require Mrs B to reimburse its investigation costs."

For the reasons given above, I proposed not to uphold Mrs B's complaint in relation to the voiding of her policy by NFU Mutual but I proposed to uphold Mrs B's complaint in relation to the claim by NFU Mutual for reimbursement of its investigation costs and to require it to waive its claim.

NFU Mutual responded to my provisional decision and referred me to three previous cases considered by this service which it says confirmed that it was entitled to recover "reasonable" costs.

These cases can be distinguished. Two of those cases related to a different product whose policy wording I haven't seen, and the third, although it also related to veterinary treatment for a horse, referred to the decision in one of the other cases. Their focus was also primarily on the reasonableness of NFU Mutual's investigation costs and not on its contractual right to recover investigation costs. Having considered those cases I'm not persuaded to change my view.

I also maintain my view that as worded, the clause that NFU Mutual relies upon is insufficiently clear that it covers investigation costs paid to third parties as well as amounts paid to the insured as a claim. It is a rule of contractual interpretation that if a clause is

unclear or ambiguous it should be construed "*contra proferentem*", that is against the party that puts that wording forward.

Mrs B's response was a request that the policy be reinstated with exclusions or an alternative that means she won't have difficulty in obtaining insurance in the future. I consider that NFU Mutual didn't act unreasonably in voiding her policy given a finding by an independent loss adjuster of reckless misrepresentation. It was acting within the policy terms in doing so. I consider it has acted reasonably in refunding Mrs B's premium when, under CIDRA, it wasn't required to do so. I cannot order NFU Mutual to reinstate a policy in these circumstances.

My final decision

For the reasons I've given above, I'm not to upholding Mrs B's complaint in relation to the voiding of her policy by The National Farmers Union Mutual Insurance Society Limited.

I'm upholding Mrs B's complaint in relation to the claim by The National Farmers Union Mutual Insurance Society Limited for reimbursement of its investigation costs and require it to waive its claim against Mrs B for these costs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 20 October 2022.

Nigel Bremner
Ombudsman