

## **The complaint**

Mr and Mrs W complain The National Farmers' Union Mutual Insurance Society Limited declined their claim on their legal expenses insurance (LEI) policy.

References to NFU Mutual includes its agents.

## **What happened**

Mr and Mrs W have a home insurance policy with NFU Mutual. The policy includes LEI cover. Mrs W requested assistance following a dispute with her neighbour.

A firm of solicitors I'll call S were instructed by NFU Mutual to conduct an initial assessment of prospects in order to determine whether Mrs W's case had any legal merit. Unfortunately, S concluded the case did not have sufficient prospects.

Mrs W – with the help of another firm of solicitors - obtained counsel's opinion which estimated a 60% chance of success.

When S reviewed the opinion, it said that the opinion was actually for the defence of an application by her neighbour for a defined boundary which was to be heard in the First Tier Tribunal rather than for a trespass claim (which they had assessed).

NFU said Mr and Mrs W were not covered for an application regarding a defined boundary.

In addition to the declined claim, Mr and Mrs W complained about their frustration that on multiple occasions they attempted to call NFU and were met with silence or long protracted hold times. This culminated in Mrs W being promised a call back from a Senior Customer Service Advisor, which unfortunately did not materialise.

When Mrs W complained to NFU it did concede they had received poor service but said the claim was not covered.

After Mr and Mrs W came to this service NFU offered them £400 for the poor service and said that its agents would cover the cost of Counsel's opinion.

The investigator thought Mr and Mrs W weren't covered for the application to define the boundary. She thought NFU's offer regarding the poor handling of the claim was a fair response to the complaint and didn't recommend anything further.

Mr and Mrs W disagreed. They said that they are defending a claim from someone attempting to take their land by using the land tribunal process to redefine a totally different shaped boundary on and across what is very clearly their own land.

## 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.

I appreciate this has been a very stressful time for Mr and Mrs W. Boundary disputes can be particularly unpleasant as when we are at home – which should be a restful safe place - we have a constant reminder of the complaint.

When Mr and Mrs W initially brought their claim to NFU Mutual they told NFU about the boundary dispute and about damage to a fence. Following S's negative assessment of the prospects of success of the claim NFU withdrew cover. Based on what I have seen I don't think NFU was wrong to withdraw cover. Although the assessment was made by a paralegal she was supervised by a named solicitor. It appears to be well reasoned and logical assessment of the prospects of success and therefore I cannot say that it was unreasonable of NFU to rely on it and to withdraw cover.

After S's assessment Mr and Mrs W's neighbour made an application to the Land Registry regarding the boundary.

Mr and Mrs W spoke to NFU again. NFU advised that they could obtain Counsel's opinion and then NFU would look at the claim again. Mr and Mrs W did obtain Counsel's opinion and he concluded:

*Mrs [W] does have reasonable prospects of success in her defence to Mr [J]'s claim for a defined boundary that is proceeding in the First Tier Property Tribunal. It is my opinion more likely than not that his claim will fail.*

Counsel's opinion therefore isn't covering the same dispute that S had considered didn't have prospects of success. S's opinion concerned an action for trespass and damage. Counsel's opinion is regarding a defence to a boundary claim at the First Tier Property Tribunal.

NFU explained to Mr and Mrs W that defending the boundary claim in the First Tier Property Tribunal isn't covered under their policy.

The policy has a property protection section which provides:

### *What is insured*

*A civil dispute relating to an INSURED PERSON'S HOME or SECONDARY HOME, or personal possessions, that an INSURED PERSON owns, or are responsible for, following;*  
*a) an event which causes physical damage to such property but the amount in dispute must be more than £100;*

*b) a legal nuisance (meaning any unlawful interference with an INSURED PERSON'S use or enjoyment of an INSURED PERSON'S land, or some right over, or in connection with it);*

*c) a trespass.*

*Provided that an INSURED PERSON must have established the legal ownership or right to the land that is the subject of the dispute.*

Defending a claim in the First Tier Property Tribunal doesn't fit within any of the categories covered as set out in the policy. Mr and Mrs W's solicitor says: *"The issue here is that you are clear on the position of the boundary and the case handler seems centred on Mr [J]'s claim which is to establish the boundary, but you are defending and not establishing a boundary you are simply protecting your land from being taken. This point seems overlooked."* I don't agree. The main issue for me is whether or not what Mr and Mrs W are seeking to defend is covered under the policy. And it isn't. The First Tier Tribunal is not being

asked to look at physical damage. It is not looking at legal nuisance. And it is not looking at trespass. It is, as Mr and Mrs W's Counsel says, *"In my assessment, this is not a case about adverse possession by either side. It is truly a case of deciding where the boundary is."* And as this is a case looking at determining a boundary they are not covered under the policy they have paid for.

I said in the paragraph above that the main issue for me is whether Mr and Mrs W are covered. I do also need to consider the poor service they received. This has been accepted by NFU and it has sent Mr and Mrs W a cheque for £400. It has also agreed with its agents that its agents will *'reimburse the costs [Mr and Mrs W] have incurred in obtaining the Counsel's opinion.'* I think this is fair compensation for the stress it has caused and for the lack of clarity regarding what the Counsel's opinion needed to cover. I appreciate everything Mr and Mrs W have endured since their dispute with their neighbour began but I think that most of this was caused by the dispute rather than NFU's poor handling and so in the circumstances I think £400 is fair and I won't be asking NFU to do anything more.

I asked Mr and Mrs W to let me know how much they spent in obtaining the Counsel's opinion on the prospects of success assessment. They have sent me some information but have not been able to provide everything I need to set out an exact figure – this is because they would need to consult their solicitor and they were concerned about extra costs being incurred. I will therefore leave it to NFU and Mr and Mrs W to agree the exact figure for the costs incurred by Mr and Mrs W for obtaining the Counsel's opinion for the prospects of success assessment.

### **Putting things right**

The National Farmers' Union Mutual Insurance Society Limited has already made an offer to pay £400 to settle the complaint and to pay the costs incurred by Mr and Mrs W in obtaining Counsel's opinion on prospects of success. I think this offer is fair in all the circumstances.

### **My final decision**

My decision is that National Farmers' Union Mutual Insurance Society Limited should reissue a cheque for £400 and reimburse the costs that Mr and Mrs W have incurred in obtaining the Counsel's opinion for a prospects of success assessment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 13 January 2023.

Nicola Wood  
**Ombudsman**