

## **The complaint**

Mr N complains that The National Farmers' Union Mutual Insurance Society Limited ("NFU") unfairly declined a claim under his business protection insurance policy.

## **What happened**

Since 2003, Mr N has held business protection insurance with NFU in relation to his farm. In 2019, he received a letter of claim about a batch of seed potatoes he'd sold which were found to be contaminated. So he made a claim to NFU.

NFU declined the claim. It said Mr N had only declared that he's a farmer, and this didn't incorporate the business activity of growing seed potatoes. It said that had Mr N disclosed this activity, an additional premium would've been charged.

Mr N wasn't happy and raised a complaint. He said he'd spoken to NFU every year before renewing his policy and his business activities had never changed. In fact, he says the growing of seed potatoes is the vast majority of his business and he's unsure how NFU hadn't known that. He says NFU are the insurance experts, and he can't be expected, as a layperson, to know how his insurance policy should be worded.

The legal claim against Mr N was settled by the insurer of another party in the supply chain. But he anticipates that, in time, this party will pursue action against him to recover their loss. And he wants assurances that he'll be covered.

The complaint was brought to our service and considered by one of our investigators. He said that under the applicable law – the Insurance Act 2015 – Mr N had a duty to make a fair presentation of the risk. Our investigator didn't think he'd done so and considered this to be a careless misrepresentation.

As NFU would've still provided cover, but for an additional premium, our investigator said the remedy available under the law is to pay the claim on a proportionate basis. So should the legal claim against Mr N materialise, NFU should cover the proportion of it provided that it met the remaining policy terms and conditions.

NFU didn't agree with our investigator. It said it hadn't alleged a misrepresentation and didn't think our service could say there was one without it considering so first. It also said we can't make a finding on hypothetical / future events.

Mr N also didn't agree. He didn't think he'd made a misrepresentation and said that it wasn't reasonable to expect him to know a specific part of his business wasn't insured.

As the complaint couldn't be resolved, it was passed to me and in November 2022, I issued the following provisional decision.

## **My provisional decision**

Since the complaint has been passed to me, NFU has told our service that the policy extension Mr N would've required in order to be covered for this claim wasn't available until 2011. It says that Mr N's business doesn't fall within its annual review framework for discussions to take place. As such, Mr N wouldn't have known this policy extension was available.

Mr N has now added the extension to his policy from 2020. But this won't cover the claim from 2019. So NFU has said that should Mr N need cover for this claim, it is prepared to apply the policy extension retrospectively for the 2019 policy period, on receipt of the premium for that year.

I've considered whether this is a fair offer in the circumstances, and I'm satisfied it is. I'm persuaded that had Mr N been offered this policy extension previously, he would've taken it out and paid the premium to ensure his business activities were covered. So the offer from NFU puts him back in the position he would've been in had he been given details of the cover available to him.

### **Responses to my provisional decision**

Mr N hasn't responded to my provisional decision and the deadline for doing so has now passed.

NFU has accepted what I've said.

### **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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct The National Farmers' Union Mutual Insurance Society Limited to apply the policy extension for seed potato growing to Mr N's policy retrospectively for the policy period covering 2019, on receipt of payment from Mr N for the policy premium.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 29 December 2022.

Sheryl Sibley  
**Ombudsman**