

The complaint

Mrs and Mr P complain that The National Farmers' Union Insurance Society Limited (NFUM) has declined part of their home insurance claim. Reference to NFUM will include those who acted on its behalf.

What happened

Mrs and Mr P made a claim with NFUM under their home insurance policy when part of one side of a wall near their home collapsed as a result of a storm on 21 January 2021. About five days after the first collapse, another two parts of the wall collapsed on the other side.

And in May 2021, a further section of wall collapsed in another period of bad weather. The wall is of a traditional construction method and it had been damaged and repaired about ten years before this set of losses took place.

Some of the collapsed wall fell onto an oil tank used to supply Mrs and Mr P's house and damaged it slightly, but also appeared to cause a small oil leak due to damage to the pipework.

NFUM accepted that the first part of the damage was due to a storm and agreed to pay for it. But NFUM didn't agree that the second collapses were because of a storm so it declined to pay for them.

After the third collapse, in May 2021, NFUM said it wouldn't pay for that collapse either, because it said it had a gradually operating cause which was water getting into the wall and causing deterioration.

Mrs and Mr P weren't happy, so they complained to NFUM. NFUM carried out a structural engineer's report on the wall and maintained its position that it would only cover the damage caused in the first collapse as it was due to the storm. It wouldn't cover both of the second collapses or the third collapse as it regarded those as being from a gradually operating cause which is excluded in NFUM's policy wording.

As Mrs and Mr P remained unhappy, they brought their complaint to this service. Our investigator looked into it and upheld it. He said NFUM should pay for all of the collapses as he found there were storm conditions around the time of all of the damage. He said he didn't think it was fair to apply the gradually operating clause exclusion as Mrs and Mr P couldn't reasonably have been aware that the wall was deteriorating. He also said NFUM should also pay £300 compensation to Mrs and Mr P.

NFUM didn't agree with the view and asked for the complaint to be passed to an ombudsman for a final decision.

NFUM later said it would pay for all four areas of the damage that had happened to the wall. It also said it would pay Mr and Mrs P £300 for their distress and inconvenience.

Mrs and Mr P have agreed with this.

It has been suggested that the wall may be better replaced by a new replacement in red brick, subject to permission being granted, and both parties have agreed to this.

I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

Both parties have broadly agreed to the settlement of this claim, but several months have passed during which the condition of the wall has deteriorated with only limited efforts being made to mitigate ongoing damage.

The wall is listed and as such is protected by law. It's continued to collapse as its declining condition leaves it unprotected from the elements, and the listing it has meant that even the debris cannot be cleared without permission from the authorities. The same permission will apply to repairing, rebuilding or replacing it.

This service has been monitoring the situation and I am disappointed that further steps have not been taken.

I can understand Mrs and Mr P's frustration with the situation. It seems to me that NFUM, and its suppliers, are the experts here and I think it needs to deal with this claim much more effectively. It seems to me there is a disconnect between the information I am seeing in the file and what is actually happening on the ground.

NFUM say it has been waiting for Mrs and Mr P to appoint a surveyor to represent them in getting permission from the authorities to work on the existing wall. Mrs and Mr P say they were waiting until the better weather of early 2023 before progressing this and getting work done on the wall.

Mrs and Mr P have now sourced a surveyor to deal with the application to the local authority at a cost of £920 plus expenses and costs.

NFUM's suppliers have pointed out that, even if the wall is demolished and replaced with a red brick alternative, the cost of doing this is still unknown, and may be higher than repairing it. I think NFUM's acceptance of the full damage caused means that it's fair that Mrs and Mr P would expect it to accept the full cost of repair or replacement of the wall.

A temporary fence is also likely to be needed to protect the area around the wall whilst works are ongoing. Mrs and Mr P obtained a price for the supply of this and I can see this price was accepted by NFUM as being competitive.

Given the lack of progress and the likelihood of this claim becoming even more complex as time goes on, I think it may be useful to both parties if I summarise the position as it stands.

The parties seem to be in agreement about most of the issues covered by this provisional decision. So, I ask both parties to respond, and if an agreement is reached then I propose to issue a final decision on this basis.

But the issues around the listed status of the wall do require further resolution which means I don't think this element of the complaint can be concluded as part of this decision. I'd like the parties to accept and understand that, and confirm they are willing to remove that issue from this complaint and work together to deal with it separately from this complaint.

If the matter later leads to other issues, there's potential for that to come back to this service as a new complaint.

Responses to my provisional decision

Mrs and Mr P and NFUM agreed with 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.

As all the parties agreed with my provisional decision, my final decision and reasoning remains the same as in my provisional decision.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. I direct The National Farmers' Mutual Insurance Society Limited to:

- Deal with all of the damage to the wall as being covered under the storm peril. This damage may require repair of the wall, rebuild or replacement with a suitable alternative.
- Pay for suitable temporary fencing.
- Pay Mrs and Mr P £300 for their distress and inconvenience, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 3 February 2023.

Richard Sowden
Ombudsman