

The complaint

Mr and Mrs P are partners in a partnership that I'll refer to as M. They have complained about the amount The National Farmers' Union Mutual Insurance Society Limited (NFUM) paid under their business interruption insurance claim.

What happened

Mr and Mrs P held business interruption insurance with NFUM for their holiday home for the period from 12 noon on 30 April 2019 to 12 noon on 30 April 2020. Mr and Mrs P claimed on their policy after M was impacted by Covid-19 and the Government's response to the pandemic. NFUM accepted Mr and Mrs P's claim under the extension for cancellation of advanced bookings (COAB) however, Mr and Mrs P asked if the claim could be put on hold until the end of the pandemic.

At the renewal of Mr and Mrs P's policy on 30 April 2020 NFUM added an exclusion to the endorsement for COAB which said that there was no cover for Covid-19.

In October 2020, Mr and Mrs P asked NFUM to review their claim. NFUM said it would pay for any bookings cancelled while the first policy was in force. However, as cover was excluded under the policy in place from 30 April it would not cover any further claims.

Unhappy with NFUM's response, Mr and Mrs P brought their complaint to us. They said that their claim should be considered as one continuous incident and therefore NFUM should be required to pay up to the policy limit of £15,000 per policy. Mr and Mrs P said that the cancellations had been processed in batches and although the cancellations had been processed by the booking company after 30 April, the cancellations had been requested before this date.

NFUM said that it had not told Mr and Mrs P that the claim would be treated as one ongoing incident and, as it had removed cover from 30 April, it didn't think it needed to pay for any cancellations after that date. However, it said that if Mr and Mrs P could show that cancellations had been made before 30 April it would consider that evidence further.

NFUM said it initially offered an incorrect settlement amount of £6,130. However, on review it accepted it had made a mistake and increased the settlement offer to £10,140.

Our Investigator looked into Mr and Mrs P's complaint and recommended that it be upheld in part. She thought the first policy only covered cancellations requested before 30 April. As she didn't think Mr and Mrs P had shown that the unpaid cancellations had occurred before 30 April she didn't think NFUM needed to pay Mr and Mrs P anything further for these. She did, however, think that the policy sent to Mr and Mrs P at renewal set out that it provided cover for cancelled bookings from 30 April. As such, she recommended that NFUM pay Mr and Mrs P's claim for bookings cancelled in the second policy year and add interest to the settlement.

Mr and Mrs P accepted our Investigator's recommendation, but NFUM didn't agree with the outcome and asked for an Ombudsman's decision. It provided a detailed response

explaining why it didn't think it should be required to pay for losses under the policy which commenced on 30 April.

I issued a provisional decision on this complaint on 13 January 2023. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Business interruption insurance offers protection from risks common to a business, but different policies can provide different types of cover. What is and isn't covered is set out in the policy terms and conditions. I've therefore looked carefully at this particular policy to see if NFUM acted fairly, reasonably and in line with the terms and conditions of the policy when declining to pay anything further on Mr and Mrs P's claim.

Cover under the policy which commenced on 30 April 2019

Mr and Mrs P's policy contains the following endorsement:

"Endorsement 2:

Cancellation of Advance Bookings Cover Extension

WE will pay for loss of INCOME incurred by YOU if a guest who has booked accommodation at YOUR PREMISES cancels or curtails their booking as a result of:

1 death, ACCIDENT, ILLNESS (confirmed by a doctor) or compulsory quarantine of them or their close relative, business associate, partner or travelling companion;..."

The policy sets out that there is a limit of £1,500 per claim and a total claim limit of £15,000 per period of insurance.

I think it's clear from this clause and the policy limits that the insured event is the customer cancelling a booking. In my view, this is supported by the policy having a limit of £1,500 per claim. There isn't anything in the policy which indicates that multiple cancellations due to the same underlying cause will be treated as one claim. Therefore, I believe that NFUM has acted fairly by offering to pay for those bookings which were cancelled during the period this policy was in force. As I think the cancellation is what is covered, I don't think it would be reasonable for NFUM to pay for any bookings which were cancelled after this policy ended on 30 April as those aren't covered by that policy.

I have considered Mr and Mrs P's point that the booking office was very busy in March and April and cancellations which were requested at that time weren't processed until after the policy ended. However, it's for the policyholder to demonstrate that they have a loss which is covered by the policy, and I haven't seen enough to persuade me that those bookings which were processed after the policy ended were cancelled while the policy was in force. I appreciate that the bookings show a 'last updated' date but, in my view, that still doesn't show it's most likely that the bookings were cancelled before 30 April. NFUM has agreed to consider any further evidence of cancellations made prior to 30 April. I think that's fair and reasonable as it is what I would expect it to do in the circumstances.

I'm pleased to see that NFUM has realised that its initial settlement offer was incorrect and have now paid £10,140 to settle M's claim. However, I don't believe that NFUM need to pay for any further bookings as I'm not persuaded that they were cancelled while the policy was in force and I think it's reasonable for NFUM to not consider all cancelled bookings due to the pandemic as one claim.

Cover under the policy which commenced on 30 April 2020

I have seen the renewal paperwork dated 26 March 2020. On the first page it says:

“Please note endorsement 2: Advanced Booking Amend. The cancellation of advanced bookings definition has been deleted and is replaced by this wording”

The business interruption insurance section of the policy lists the endorsements. Endorsement 2 is titled Advanced Booking Cancellation Amend and says “Cancellation of Advanced Bookings Cover Extension excl. coronavirus. The Cancellation of Advanced Bookings Extension is restated as follows...”

The endorsement is the same as the previous year but says it will not provide cover as a result of “death, ILLNESS or compulsory quarantine resulting from coronavirus, mutations of coronavirus or diseases that result from coronavirus”.

The policy also includes endorsement 4 which is called “Cancellation of Advance Bookings Cover Extension”. This extension has the same wording as the previous year and did not include any exclusion.

NFUM said the renewal documents included both endorsements as its underwriting system did not allow it to remove the endorsement at that time. NFUM said it had made it clear in the renewal that cancellations due to Covid-19 weren’t covered.

The starting point for interpreting a contract is to consider what a reasonable policyholder with the relevant background knowledge would have believed when entering into the contract.

While I don’t think the inclusion of two similar endorsements is particularly helpful, on balance, I don’t think that a reasonable policyholder would have believed that there was cover for cancellations as a result of Covid-19. I think NFUM made it clear through the wording on the first page of the renewal and through endorsement 2 that the endorsement had been replaced with one that excluded cover for Covid-19. I don’t think a reasonable policyholder would believe that the policy both covered cancellations as a result of Covid-19 and also didn’t cover it.

Mr and Mrs P have not made the argument that they believed they were covered for Covid-19 due to the wording on the policy and I’ve also seen transcripts of calls made after the renewal which indicate that Mr and Mrs P had understood that the policy didn’t provide cover.

For example, in a call in October 2020 Mr P said: “On the 25 or thereabouts I have a letter dated saying that you know there is going to be a change to our new policy and we are no longer covered which- we were my reaction to that is still, you know, huge disappointment really I just it you know as customers of the NFU, of any insurance company, you know we were shocked at how swift that landed on the doormat. You know, that change in policy but we put that to one side went back to the fact that we had been reassured that we were covered under our old policy”.

I don’t consider that the inclusion of the second endorsement provides cover and therefore, I don’t think that NFUM need to provide cover under the policy which commenced on 30 April 2020.

Interest

I understand that NFUM has now paid £10,140 to settle Mr and Mrs P's claim. I'm pleased that this error has been rectified but I think that NFUM's error caused Mr and Mrs P a financial loss because they were without £4,010 they should have had sooner. To put things right, I think it would be fair and reasonable for NFUM to add interest to that amount at our usual rate of 8% simple per annum. I think it's fair and reasonable for an insurer to have some time to consider how much to pay on a claim and I think a month is a reasonable time for this. Mr and Mrs P asked for their claim to be revisited on 9 October 2020. Therefore, I think it would be fair and reasonable for NFUM to pay interest from 9 November 2020 until the date it made payment.

I recognise that overall, this isn't the answer Mr and Mrs P were hoping for but, having considered things very carefully, I don't think it would be fair and reasonable for me to require NFUM to pay anything more than I have set out.

NFUM accepted my decision and said it had nothing further to add. Mr and Mrs P didn't agree. While I have considered the entire response, I will summarise what I consider to be the key points:

- Insurance is designed to act as a peace of mind and when Mr and Mrs P called NFUM in March 2020 they were told they would be covered.
- When the UK Government announced restrictions on 23 March 2020 this meant that all bookings during lockdown needed to be cancelled and could not go ahead. This approach was accepted by the loss adjuster appointed by NFUM.
- On 8 October 2020 Mr and Mrs P were told they would only be covered for bookings cancelled before 30 April 2020. NFUM deny confirming that it told Mr and Mrs P that the pandemic would be considered as one continuous incident.
- When bringing the complaint to our service Mr and Mrs P said that they thought the endorsements made the policy document unclear. Therefore, they disagree that they haven't made the argument that the documents were unclear.
- NFUM's explanation of why the policy document contained contradictory endorsements is nonsense. If that was the case, NFUM could have explained that in the covering letter.
- Mr and Mrs P were unaware of the contradictory endorsements at the time of the renewal and only became aware of it when looking at the documents in more detail.
- Mr and Mrs P don't consider that NFUM did enough to apologise for what had gone wrong.

I considered the points made by Mr and Mrs P and let both them and NFUM know that I intended to award a further £300 for their distress and inconvenience. I said that NFUM's loss adjuster indicated that cover would be provided for longer than it ultimately was, which led to the claim going on for longer than it should have done. I said that if the loss adjuster had been clear that cover was only provided until 30 April 2020 Mr and Mrs P would have been more likely to have made their claim at that point, rather than waiting until later in the year. I also said that NFUM making a mistake in the calculation of the settlement had caused Mr and Mrs P further distress and inconvenience.

NFUM said there had also been delays by Mr and Mrs P but accepted my provisional decision in order to resolve the complaint. Mr and Mrs P didn't provide any further comments by the required date.

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 not persuaded to depart from my provisional decision and subsequent email to both parties. I'll explain why.

Cover under the policy which commenced on 30 April 2019

I have explained in my provisional decision, why I believe that NFUM has settled Mr and Mrs P's claim fairly and reasonably and in line with the terms of the policy so I don't intend to repeat those reasons.

I've seen transcripts of calls between NFUM and Mr and Mrs P. On 11 March 2020 NFUM told Mr and Mrs P that their policy would provide cover if the Government confirmed quarantine. However, I haven't seen anything in those calls which indicates that NFUM told Mr and Mrs P how long the cover would be provided for.

Mr and Mrs P have provided evidence which supports that the loss adjuster indicated that their claim would be paid for cancelled bookings until 4 July 2020. I also note that in October 2020 NFUM recognised that it had been treating the claim as one, rather than a series of claims. However, this does not mean that NFUM need to pay more than is required by the policy. That's because where an error occurs I consider what the impact of that error was and in this case I think the error led to Mr and Mrs P's distress and inconvenience. I think they would have been upset to find that they weren't covered for the period they believed they would be.

I also believe that NFUM not providing the correct settlement amount for this period caused Mr and Mrs P distress and inconvenience, as they had to contact NFUM to get this resolved and they believe that NFUM hasn't appropriately recognised its error. I remain of the view that £300 is a fair amount of compensation for this, in addition to the interest to compensate Mr and Mrs P for being without money that they should have had sooner.

Cover under the policy which commenced on 30 April 2020

As set out in my provisional decision, the starting point for interpreting a contract is to consider what a reasonable policyholder with the background information that would reasonably have been available at the time they bought the policy would have understood the language in the contract to mean. This is tested as at the time the parties entered into the contract.

For the reasons set out in my provisional decision, I believe that a reasonable policyholder would understand the policy to mean that cover for Covid-19 had been excluded from the renewal of the policy in April 2020. Mr and Mrs P said NFUM could have explained why both endorsements remained. However, NFUM did say in its covering letter:

"Please note endorsement 2: Advanced Booking Amend. The cancellation of advanced bookings definition has been deleted and is replaced by this wording"

I think this is clear enough to make Mr and Mrs P reasonably aware that the policy didn't provide cover for cancellations due to Covid-19. As such, I don't think endorsement 4 means that cover is included.

I have noted Mr and Mrs P's point that they believe the endorsements in the policy wording are unclear and that they hadn't read the policy documents at the time of the renewal. I don't think I need to make a finding on this point because even if I accept that they weren't aware of the exclusion at the time it doesn't make a difference to the outcome of this complaint.

That's because, I don't think the policy that inceptioned in April 2020 would reasonably be understood as providing cover and Mr and Mrs P not reading their policy documents at the time of the renewal does not change that.

I recognise Mr and Mrs P's business has been impacted by Covid-19 and they are frustrated by NFUM's actions in how it has dealt with their claim. I accept that NFUM could have handled some things better and have set out how NFUM should put things right below.

Putting things right

To put things right NFUM should:

- Pay Mrs P and Mr P interest on the £4,010 at 8% simple per annum from 9 November 2020 until the date it made payment.
- Pay Mr and Mrs P £300 for their distress and inconvenience.

My final decision

I uphold this complaint and require The National Farmers' Union Mutual Insurance Society Limited to:

- Pay Mrs P and Mr P interest on the £4,010 at 8% simple per annum from 9 November 2020 until the date it made payment.
- Pay Mr and Mrs P £300 for their distress and inconvenience.

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 10 March 2023.

Sarann Taylor
Ombudsman