

The complaint

Mr and Mrs M are unhappy with how The National Farmers' Union Mutual Insurance Society Limited (NFU) handled a claim they made under their home insurance policy.

Mr and Mrs M had an appointed representative dealing with the claim on their behalf. References to Mr and Mrs M also refer to that representative.

NFU are the underwriters of this policy. Part of this complaint concerns the actions of the experts appointed by NFU. As NFU has accepted they are accountable for the actions of these parties, any references to NFU includes the actions of these experts.

What happened

Mr and Mrs M have explained that they noticed the drains at their property backing up. So, they appointed a drainage and plumber contractor, who I'll call B, to come and inspect the drainage system and establish what the problem was.

The drainage system included a septic tank. So, this was drained, and B were then able to expect the system. B noted several problems. It said there *were "defects to the pipework, including open joints, displacement, cracked pipework, debris build-up and root ingress. Pitch fibre pipework was also observed which has deformed, causing significant reduction in flow."*

It recommended repairs to the pipework, as well as jet washing. B also said there were issues with the septic tank itself – which it said was located close to a large tree, which had likely compromised the tank. And there was a problem of surface water discharging through the tank. B considered a new sewerage treatment plant system was needed.

Given the above, at the end of November 2021, Mr and Mrs M contacted their insurer, NFU, to make a claim under their home insurance policy, for the necessary work.

NFU appointed various parties to assist in validating the claim, including a loss adjuster and a forensic investigations expert – who compiled reports on the situation at Mr and Mrs M's property.

In March 2022 NFU informed Mr and Mrs M that their claim was declined. It said that the septic tank didn't conform with the building regulations, including the General Binding Rules, which came into effect on 1 January 2015. And so, the tank wasn't covered under the policy. And in terms of the pipework, NFU said this had reached the end of its anticipated lifespan.

Mr and Mrs M didn't think NFU's decision was fair. In terms of the septic tank, they didn't think it was fair to raise non-compliance of building regulations to decline this element of the claim. Mr and Mrs M said it was reasonable to conclude the septic tank was installed prior to the regulations NFU noted. And so, by the tank not being in line with building regulations referred to, the tank wasn't being non-compliant. Mr and Mrs M said they had received no notice that they needed to be compliant with any regulations.

In terms of the pipework, Mr and Mrs M said they didn't agree the issues were due to the pipes having reached the end of their expected lifespan.

Mr and Mrs M noted that the drainage field would need to be replaced, and the storm drainage disconnected from the existing foul system. But they understood this element of work needed wasn't covered by their insurance policy.

NFU reviewed the matter further. It then accepted part of the claim – which was in relation to damage on the vitrified clay piping. This being because the damage there was caused by seasonable shrinking and swelling of the clay sub-soil. NFU offered Mr and Mrs M £2,365.20 inclusive of VAT for this element of the claim. But its position on the remainder of the claim remained the same.

Mr and Mrs M remained dissatisfied with this. So, they referred their complaint to this service for an independent review.

In September 2022, whilst the complaint was here with this service, NFU also accepted there had been some delays in the handling of Mr and Mrs M's claim and offered £300 compensation for this.

Our investigator reviewed Mr and Mrs M's complaint. They considered that NFU had acted fairly in declining to pay for the damage to the pitch fibre pipes and the septic tank. And they were satisfied that NFU had agreed to settle the vitrified clay pipe. Our investigator thought the £300 compensation offered by NFU was fair too.

Mr and Mrs M responded to our investigator. They didn't comment further on the £300, or the clay pipe element. And they accepted the findings in terms of the pitch fibre pipework. But Mr and Mrs M disagreed that the damage to the septic tank wasn't covered.

As Mr and Mrs M disagreed with this, this complaint has been referred to me to decide. I issued a provisional decision to the parties. In this I said:

"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 intending on upholding this complaint in part. I've explained my reasoning and intended redress below.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether NFU acted in line with these requirements, when it handled Mr and Mrs M's claim.

I've also reviewed Mr and Mrs M's policy documentation, to see what cover their policy provided. On doing so, I can see the policy says:

"3) Public services

WE will pay for DAMAGE, which YOU are legally responsible for, to any cable, pipe, drain, inspection cover or underground sewerage tank serving YOUR BUILDINGS."
The term 'damage' is defined as:

"Unexpected and unintended physical loss or damage."

Given the above, I'm aware that the policy provides cover for pipework and the septic tank serving Mr and Mrs M's buildings – if it suffers from unexpected and unintended physical loss and damage. So, I've also considered this when deciding whether NFU has acted fairly.

Reference has been made to damage to the clay pipework, pitch fibre pipework and septic tank. So, I've addressed these three elements separately.

Vitrified Clay Pipes

NFU has accepted the damage to these pipes under Mr and Mrs M's policy, under the public services section of the policy noted above.

As this element of the claim has been accepted, and there is no further dispute in this respect, I haven't needed to consider it further.

NFU has offered Mr and Mrs M £2,365.20 in respect of this. So, it should pay Mr and Mrs M this, if it hasn't already done so.

Pitch Fibre Pipes

As above, NFU appointed representatives to assist in validating Mr and Mrs M's claim. One such representative, who I'll call H, visited the property and completed an inspection of the septic tank and pipework. In relation to the pitch fibre pipes, H discussed the condition of the pipework it observed:

"The entirety of the surveyed pitch fibre runs were found to be deformed by 40 to 60 percent throughout their length. Such deformation is a common problem with pitch fibre pipes and typically occurs due to a gradual deterioration in the strength of the pipe material over time which leads to the pipe being able to maintain a circular form. Indeed, various online sources (including B's website) state that pitch fibre pipes have a 'design life' 40 years. Whilst I do not know when the pitch fibre drainage runs at the property were installed, given that such pipes were only manufactured in the UK between the early 1950s and mid-1970s, I consider there pipes were most probably installed between 45 and 70 years ago, As such, I consider the deformation affecting these pipes to be the result their having reached the end of their life expectancy."

Given the above, I don't think NFU has acted unreasonably in coming to the conclusion that the 'public services' section of the policy doesn't cover the damage to the pitch fibre pipes in this case. The particular damage to the pipework – it's deformation – was to be expected. And the definition of 'damage' only covers unexpected physical loss. I haven't seen more persuasive evidence to dispute this was the cause of the damage in Mr and Mrs M's case.

And both the 'public services' and 'general exclusions' in the policy specifically exclude cover for damage caused by wear and tear. So, I'm satisfied that NFU has acted fairly in noting the damage to the pitch fibre pipes isn't covered under the policy. Following our investigator's outcome on the matter, Mr and Mrs M have accepted this too.

Given I don't think NFU acted unfairly in this respect, I don't intend on requiring it to do anything more with regards to this element of the claim.

Septic tank

I do, however, consider that NFU needs to take further action in relation to the septic tank. It's not in dispute that the septic tank was damaged, and so meets the criteria set out in the 'public services' section of the policy. B, Mr and Mrs M's contractor noted damage. And the

report from NFU's appointed representative H, notes cracking to the tank. H notes what it considers the cause of the damage to the tank to be from. It says:

"the cracking to the tank walls was caused by these walls having insufficient strength to support the ground around the tank and/or direct physical pressure from the roots of the oak tree" that is very close to the tank.

As the fact there is damage isn't disputed, I haven't gone into further detail here. As I'm satisfied that the damage to the septic tank is covered by an insured peril in the policy, I'm aware that NFU would need to deal with this element of the claim, unless it has shown that an exclusion in the policy applies.

From reviewing the information provided to me, NFU hasn't raised any specific exclusions in relation to the septic tank. But it has said the septic tank isn't in compliance with building regulations. And this is why it isn't settling this element of the claim.

Reviewing the policy, I can't see any specific exclusion which notes a claim won't be settled if the septic tank isn't in compliance with current building regulations. So, I don't think it can fairly rely on this alone to decline the claim.

The only potentially relevant exclusion in the policy is one which excludes damage to public services, where the damage is caused by faulty design, materials or workmanship. So, I've thought about whether NFU has acted fairly in this respect.

And I'm not satisfied it has. I haven't seen sufficient evidence that the damage discovered to the tank was because of it being of a faulty design, or that the materials or workmanship were faulty. NFU hasn't shown when the septic tank was put in place, and what regulations needed to be met at the time of construction. It therefore hasn't shown that its construction was faulty.

I understand NFU has said that Mr and Mrs M would have needed to replace the septic tank, whether there was damage to it or not. And so, they would have suffered a loss anyway. It says this is because of the 'General Binding Rules' which came into place in 1 January 2015.

Mr and Mrs M, through their representative have accepted that re-routing the storm drainage system, and the installation of a new drainage field aren't covered by the policy. As well as the cost for an inlet dipper pipe. They have accepted these are things they need to do at their own cost, in order to update the drainage system. But they do consider that the policy should respond in relation to the septic tank, as it was damaged.

And given the above, I agree. The policy does cover the damage to the septic tank itself. So, I think NFU should pay Mr and Mrs M it would have cost NFU to replace the septic tank with an equivalent one.

Claims handling

Mr and Mrs M feel the handling of their claim has been poor. NFU accepted there had been some delays in the claim, and in the complaint. And acknowledged the claim was declined in full previously when it shouldn't have been. It offered £300 compensation for the distress and inconvenience this caused to Mr and Mrs M.

As it has been accepted there were delays, and issues which caused Mr and Mrs M distress and inconvenience, I haven't needed to decide whether there were any failings here – it has

already been acknowledged that there were. Instead, I've needed to consider whether the £300 compensation offered is fair and reasonable in the circumstances.

I think it is. I say this because I think it fairly recognises the trouble, upset and frustration Mr and Mrs M have explained they've experienced due to the initial delays, and in having the clay pipe element of their claim declined at first.

I've thought about whether any additional compensation would be fair and reasonable. But I don't think it would be. I'm satisfied the impact of the situation wasn't sufficient enough to warrant an additional compensation figure. And the interest figure I'm intending to award, as detailed below, ensures that Mr and Mrs M don't lose out because of NFU's initial decline of the septic tank.

My provisional decision

Given the above, my provisional decision is that I uphold this complaint, in part, and intend on requiring The National Farmers' Union Mutual Insurance Society Limited (NFU) to:

- Pay the amount it would have cost NFU to replace the septic tank with one that is equivalent to that which Mr and Mrs M already had. If Mr and Mrs M have completed work already, then NFU will need to add 8% interest, simple per annum on the payment it makes, from date of invoice for the work, to date of settlement, less any tax properly deductible, to account for the time Mr and Mrs M have been without these funds.*
- Pay Mr and Mrs M £2,365.20 in settlement of the damage to the clay pipes, if they haven't already. If this amount hasn't been paid, then NFU will need to pay Mr and Mrs M 8% interest, simple per annum, from 4 August 2022 when it offered the payment, to the date of settlement, less any tax properly deductible.*
- Pay Mr and Mrs M £300 compensation, if they haven't already.*

**If HM Revenue & Customs requires NFU to deduct tax from this interest, NFU should give Mr and Mrs M a certificate showing how much tax its deducted, if they ask for one."*

Mr and Mrs M, and NFU both responded to the provisional decision. Mr and Mrs M said they were satisfied with the outcome that the septic tank part of the claim should be covered. But they raised concerns with the intended redress.

In terms of the redress, Mr and Mrs M said:

- They didn't think it was fair for NFU to pay Mr and Mrs M the amount it would have cost it to replace the tank. They said NFU essentially approved the contractors Mr and Mrs M had appointed previously to carry out the work. So, any settlement should be based on those contractors undertaking the work, rather than NFU and its appointed contractors.
- That the policy also included an allowance for meeting building regulation requirements. And in order for Mr and Mrs M to have done that – any requirement would have been for a tank of a larger size than the one that was damaged to have been put in place. So, any settlement should allow for that too.
- They had to take funds from a self-invested personal pension (SIPP) to help pay for the necessary works. Meaning an obligation to pay 20% income tax on this amount. So, rather than NFU paying 8% interest, they considered NFU should provide a settlement which meant Mr and Mrs M didn't lose this 20%.

NFU didn't agree that it should pay anything towards the septic tank. It said the damage to the septic tank was gradual, with it having reached the end of its life with on-going pressure from trees and having insufficient support. And NFU said gradual damage was specifically excluded under the policy. NFU also noted the tank replacement, which it didn't consider to be covered, wouldn't be the same, given new regulations.

I responded to the parties on the above and noted one proposed change in redress. Mr and Mrs M accepted this. NFU didn't respond.

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've decided to uphold this complaint in part, for the same reasons as noted in my provisional decision. But the redress noted in my provisional decision has had one change. I've detailed this, and the reasoning for it, below.

NFU has said the cracking to septic tank happened gradually, rather than this being a one-off event. And, as the policy doesn't cover gradual damage, they noted the septic tank shouldn't be covered. So, I've thought about this further.

And having looked at the policy wording, I can't see any exclusion, general or specific to the public services section, which excludes damage caused gradually. There is an exclusion for damage caused by wear and tear. But, based on the reports from all contractors, I can't see the damage was due to wear and tear. As detailed in my provisional decision, NFU's contractor H said:

“the cracking to the tank walls was caused by these walls having insufficient strength to support the ground around the tank and/or direct physical pressure from the roots of the oak tree” that is very close to the tank.

Given the above, it wasn't the tank wearing that caused the damage, but was instead pressure from the ground and perhaps from the nearby tree.

As detailed in my provisional decision, the only potentially relevant exclusion in the policy is one which excludes damage to public services, where the damage is caused by faulty design, materials or workmanship. So, I thought about whether NFU has acted fairly in this respect.

And I'm not satisfied it has. I haven't seen sufficient evidence that the damage discovered to the tank was because of it being of a faulty design, or that the materials or workmanship were faulty. NFU hasn't shown when the septic tank was put in place, and what regulations needed to be met at the time of construction. It therefore hasn't shown that its construction was faulty.

So, I'm satisfied there was an insured event, in relation to the septic tank. And, that an exclusion doesn't apply. With this in mind, NFU does need to replace the septic tank. Mr and Mrs M has said the redress provided to them for the septic tank shouldn't be based on what it would have cost NFU to replace the septic tank with an equivalent one.

They've noted that the policy allows for meeting building requirements – and that would have meant a larger tank. I accept the policy does make an allowance for this. I haven't been provided with a copy of the building regulations that say this. But, if the building requirements mean a larger tank must be in place, then NFU should be paying for a replacement septic tank, of the size that meant building regulations would be met.

Mr and Mrs M have said they've actually replaced the tank with a sewerage treatment plant. They explained this was a better option, and the cost differential wouldn't have been much. But that was Mr and Mrs M's choice. And whilst it may have been a better option, the policy is clear that it only includes an allowance to meet current building regulations. I haven't seen that current building regulations require a sewerage treatment plant, rather than a septic tank. So, I don't think it would be fair for NFU to base its settlement on the replacement of the septic tank with a sewerage treatment plant.

So, I think NFU should pay the amount it would cost to replace the septic tank, with one of a size which would meet current building requirements.

Mr and Mrs M have said that the cost to replace the above shouldn't be based on NFU's costs, but instead on the costs of Mr and Mrs M's contractors. But I don't agree that's fair.

When the claim was first made, Mr and Mrs M's contractor noted the following in an email on 30 November 2021:

*"We respectfully request that you consider this claim on a **validation only basis**. The policyholder has already selected their preferred contractor, therefore once you are in receipt of the validation report; please do contact us to provide the scope of the repairs and your limit of liability agreed."*

Given the above, it's clear that Mr and Mrs M always intended on using their own contractor. That is their choice. But, it wouldn't be fair for NFU to pay more than it would have paid with its own contractors, because Mr and Mrs M made that choice. Given it was clear from the outset that Mr and Mrs M were using their own contractors, I'm satisfied NFU didn't approve on take on Mr and Mrs M's contractors as their own – but were dealing with the claim on a cash settlement basis. So, I remain of view that NFU should pay what it would have cost it, to replace the septic tank. With the amendment above, if building regulations require it.

Lastly, Mr and Mrs M have noted they had to take £17,500 out of a SIPP in order to carry out the works. And so there have been income tax implications for them. I've thought carefully about this. But I also don't think it would be fair to ask NFU to negate these issues.

Mr and Mrs M had a large amount of works to do on the drainage system at their property, including uninsured works. And I can see from Mr and Mrs M's contractor's report, that all of the works were costed at £34,901 plus VAT. Given this, I'm aware that it's likely Mr and Mrs M were going to need to use their own funds for a large degree of the work. And I don't think it's fair to apportion the septic tank element to funds removed from the SIPP, when a large amount of other insured work was necessary.

I'm satisfied that the 8% interest previously detailed, is a fair and reasonable way to acknowledge that Mr and Mrs M were without funds for the septic tank replacement, when they should have had that earlier.

My final decision

Given the above, my final decision is that I uphold this complaint in part. I require The NFU Mutual The National Farmers' Union Mutual Insurance Society Limited (NFU) to:

- Pay the amount it would have cost NFU to replace the septic tank with one with one of a size which would meet current building requirements. If Mr and Mrs M have completed work already, then NFU will need to add 8% interest, simple per annum on the payment it makes, from date of invoice for the work, to date of settlement, less any tax properly deductible, to account for the time Mr and Mrs M have been without these funds.
- Pay Mr and Mrs M £2,365.20 in settlement of the damage to the clay pipes, if they haven't already. If this amount hasn't been paid, then NFU will need to pay Mr and Mrs M 8% interest, simple per annum, from 4 August 2022 when it offered the payment, to the date of settlement, less any tax properly deductible.
- Pay Mr and Mrs M £300 compensation, if they haven't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 18 April 2023.

Rachel Woods
Ombudsman