

The complaint

Mr and Mrs C complain that The National Farmers' Union Mutual Insurance Society Limited (NFU Mutual) unfairly declined a claim made on a legal expenses insurance policy.

Where I refer to NFU Mutual within this decision, this includes agents and representatives acting on its behalf.

While Mr and Mrs C refer the complaint to our service as joint policyholders, Mr C has been the primary point of contact throughout the claim and correspondence with our service, so I'll refer to him within the decision.

What happened

Mr and Mrs C hold a legal expenses insurance policy with NFU Mutual. Following a leak at their home, they wanted to take legal action against a contractor who had carried out work on their roof.

NFU Mutual accepted that the dispute fell within the extent of the policy's cover, and appointed solicitors to work on Mr and Mrs C's behalf. Mr C's made complaints about the solicitors and over the course of the claim the matter has been referred to three different firms of solicitors.

The final firm of solicitors (who I'll refer to as C) concluded Mr and Mrs C's claim didn't enjoy reasonable prospects of success. On that basis, NFU Mutual withdrew cover and declined to cover any further costs.

Mr C complained to NFU Mutual. When it rejected his complaint, he approached our service. Our investigator didn't think NFU Mutual had done anything wrong. Mr C didn't agree and asked for an ombudsman's decision.

My provisional decisions

I've previously issued two provisional decisions outlining my thoughts on Mr and Mrs C's complaint, and what NFU Mutual needs to do to put things right.

The common theme of both provisional decisions has been that I don't think NFU Mutual acted fairly by withdrawing cover in light of C's assessment that Mr and Mrs C's claim didn't have reasonable prospects of success. In my first provisional decision, I said: *The policy defines "reasonable prospects" as "the prospects that the insured person will recover losses or damages... make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%. (NFU Mutual), or a preferred law firm on their behalf, will assess what the prospects of success are."*

I'm aware the claim had been going on for a considerable period before C advised NFU Mutual that they didn't consider the claim enjoyed reasonable prospects of success. I know Mr C takes the view that in previously accepting cover for the claim, and appointing solicitors who have been conducting litigation, NFU Mutual shouldn't be entitled to withdraw cover.

I don't agree with this. The terms and conditions are clear in saying reasonable prospects of success need to exist for the duration of the claim. It's reasonable to say this is an ongoing requirement and that the prospects of success will change as information and evidence is obtained. That's entirely fair – it's unreasonable to expect an insurer to continue covering costs when a legal representative doesn't think the claim will be successful.

What I need to do though is consider whether NFU Mutual reasonably withdrew cover in light of the assessment completed by C. I don't think it did.

Broadly speaking the assessment completed by C identifies two issues which meant, in their view, Mr and Mrs C's claim didn't have reasonable prospects of success. The first was procedural, as there was a concern that the previous solicitor (M) hadn't issued the relevant documents on the other party in time. The second was establishing that the leak had been caused by the contractor against whom Mr and Mrs C were seeking to take action.

I've carefully considered the assessment completed by C, and believe it to be well reasoned. I have no evidence to suggest it wasn't based on a reasonable assessment of the information available to C when it was completed. That being said, I think the assessment itself highlights that there was a limit to what it could conclude and that the reasons for this, when considered alongside other information NFU Mutual had available, meant that the conclusion to withdraw cover wasn't reasonable.

The aspects C's assessment highlight as being unresolved appear to link back to the actions of M before C's appointment. In effect, C were unable to make a definitive conclusion on the procedural issues as information relating to the service of the relevant documents wasn't provided by M prior to them completing the assessment. I think it's fair to say that the procedural issues identified by C don't lead to an inevitable conclusion that Mr and Mrs C's claim would be struck out, which would of course mean that it didn't have reasonable prospects of success. The assessment appears to indicate that further enquiries would be needed on that point.

In terms of the causation aspect of the assessment, C says an expert report could assist in establishing the cause of the leak, and the contractor's liability for that cause. It appears to be accepted by NFU Mutual that prior to C's appointment, it had agreed to fund such an expert report and M was going to appoint the relevant expert. That had been communicated to Mr C. After Mr C complained about M's conduct, the claim was moved to C who completed their assessment without that expert report.

C's assessment says that the expert report could mean the claim has reasonable prospects of success, but does say that this would be unlikely. C also acknowledges in their assessment that it hadn't received the full file of evidence from M and so had been unable to complete their assessment based on that evidence.

From what I have available to me, I can see that C identified an expert report as potentially assisting in establishing that Mr and Mrs C's claim has reasonable prospects of success. M had apparently sought (and been granted) funding from NFU Mutual to obtain such a report.

It follows that M also believed the expert report would assist in establishing causation and therefore determining whether the claim had reasonable prospects of success. Mr C had been told that such a report would be obtained.

So in the absence of that expert report, and taking into account the identified limitations of C's assessment, I don't think it was reasonable for NFU Mutual to withdraw cover when it did.

In the first provisional decision, I said NFU Mutual should pay £250 compensation, and fund an expert to inspect Mr and Mrs C's roof and a further assessment of the prospects of success in light of the expert's findings.

Mr C's response to the provisional decision noted that following the withdrawal of cover, he'd agreed a settlement with the contractor which had covered the cost of repairing the roof, but not the cost of repairing internal damage. He believed NFU Mutual should cover those costs.

In my second provisional decision, I concluded that while I still believed Mr and Mrs C's complaint should be upheld, I wasn't satisfied NFU Mutual should be required to meet the costs sought by Mr and Mrs C. I explained:

I've considered whether I should instead ask NFU Mutual to cover the costs to repair the internal damage. I'm not persuaded I should. This is because, in order to do so, I'd have to be satisfied that, if NFU Mutual had funded the expert report as it should have, the conclusion of the legal proceedings would have been that the contractor would have been required to meet those costs.

To reach that conclusion, I think it's fair to say the following would need to have occurred:

- The expert report concluded that the sole cause of the damage was the contractor's negligence.
- Any procedural issues around the issuing and serving of court papers were satisfactorily resolved.
- C concluded that Mr and Mrs C's claim did have reasonable prospects of success.
- Either the contractor accepted liability and to settle all the costs, or Mr and Mrs C were successful in their court action against the contractor.
- The court imposed settlement included all of these costs.

That's a number of significant steps before I could make that conclusion. I'm also mindful that the original assessment completed by C did say the expert report would only possibly change the outcome, so I think that an element of doubt was always likely to exist.

I'm aware that Mr C has said a contractor who repaired the roof has said the cause of the leak was the work carried out by the contractor whom Mr C took action against, but I can't see this is supported in any of the further evidence he sent us – that's limited to the costs incurred by Mr C to carry out all the repairs and other court documents. In any case, I'm not sure I could accept this contractor's view on the cause of the damage as it seems their work was limited to carrying out the requested repairs – whereas the expert report which was to be obtained was to consider the condition of the whole roof, the cause of the leak and who (if anyone) was responsible for this.

I don't think I can reasonably conclude that if NFU Mutual had obtained the expert report in order to assist C's assessment, that the contractor would have been liable for the internal repairs. I can't ask NFU Mutual to meet those costs.

I did, however, conclude that £250 compensation was no longer suitable, in light of there being no prospects of moving forward with the claim as it was now settled. I said that in order to recognise the distress and inconvenience caused to Mr and Mrs C, NFU Mutual should pay £750 compensation. I thought this more properly acknowledged the loss of opportunity and distress caused by NFU Mutual unfairly withdrawing cover.

Responses to the second provisional decision

NFU Mutual didn't initially accept the first provisional decision, but has accepted the findings and suggested compensation contained in my second provisional decision.

Mr C said he believed NFU Mutual should be required to pay the repair costs to the interior of the property and pay the £750 compensation. In his opinion, if the expert report had been obtained the cover would have remained in place and he'd have been successful in having the contractor found to be liable for the internal damage and responsible for repairing it.

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 NFU Mutual has now accepted that the decision to withdraw cover was unreasonable, I don't intend to make any further points with regards to this element of the complaint. My reasons why are outlined above and have been repeated in two provisional decisions, and I have nothing more to add to this.

I also don't intend to repeat my reasons why I think that £750 compensation is fair. That amount has been accepted by NFU Mutual and Mr C's response indicates he believes it should be paid in addition to the repair costs, suggesting that he accepts the amount as well.

What I do need to address is whether NFU Mutual should be liable for the repair costs. I'm grateful to Mr C for his detailed submission and further evidence on this point, I'm unable to agree that this is something I could reasonably require NFU Mutual to cover.

I know Mr C's convinced that if the expert report had been funded, as it should have been, that his claim would have been successful. He's provided photos of the area of the roof which was repaired using the funds provided by the contractor, and says that this was the sole source of the damage to the interior of the property.

I'm not qualified to make such an assessment, and that being the source of the damage wouldn't, in any case, automatically mean that the original contractor was liable for the damage. Such a judgement would, I'm satisfied, only be appropriate for a court to make. I'd also refer back to my earlier point that the expert report would have considered the condition of the whole roof and the source of the damage to the interior of the property. Photos of the roof don't do this – they give no context or comment around the damage to the roof or the interior.

Mr C also says that the procedural issues had been addressed in an email confirming dates that various documents were sent to the contractor and their representatives. I'm satisfied that such information would have been considered in any new assessment of the prospects of success of the claim. As I outlined in the second provisional decision, however, the procedural issues weren't the only reason why the claim might have been unsuccessful.

I know how strongly Mr C feels that without the withdrawal of cover, his claim would have been successful. Unfortunately, I'm unable to conclude on the balance of probabilities that this would have been the case – I think there are too many steps, all of which would have had to have been found in his favour, making it too remote for me to safely reach such a conclusion.

My final decision

It's my final decision to uphold this complaint in part. In order to put things right, The National Farmers' Union Mutual Insurance Society Limited must pay Mr and Mrs C £750

compensation.

NFU Mutual must pay this amount within 28 days of us telling it Mr and Mrs C accept this decision. If it doesn't, it must pay simple interest at a rate of 8% on this amount from that date to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 22 June 2023.

Ben Williams
Ombudsman