

The complaint

W – a company – has complained that The National Farmers' Union Mutual Insurance Society Limited (NFU) declined its claim for storm damage to one of its buildings, and/or that it mis-sold the policy.

What happened

W made a claim when the roof of one of its buildings was blown off during a storm.

NFU declined the claim based on an exclusion under the storm peril for buildings which weren't in a good state of repair. It also didn't accept the policy was mis-sold. But because NFU said W could never have benefited from cover under the storm peril, for the building in question, it agreed to refund that part of the premiums paid by W.

W complains that NFU was aware of the condition of the building as its agents had inspected it. It also says a report completed in 2014 suggested the building had a minimum life expectancy of ten years, so NFU's decision was unfair.

Our investigator said W had brought its complaint to our service out of time, based on the rules which govern the complaints we can, and can't, consider. But she checked with NFU and it consented to us considering the complaint despite it being made too late.

Our investigator didn't think the complaint should be upheld. She didn't think NFU's decision to decline cover for the damage was unfair, due to the poor condition of the building. She also said reports provided by W suggested it was aware of the poor condition of the building, and that it was near the end of, or beyond, its useful life.

In terms of whether the policy was mis-sold, our investigator said she hadn't seen evidence that W had made NFU aware that the building was in a poor condition or that it needed to be fully replaced. She said the sales and renewal literature provided by NFU clearly outlined the requirements of cover, and the relevant exclusions. So, she didn't agree the policy had been mis-sold.

W didn't accept our investigator's opinion. So, as no agreement has been reached, the complaint has been passed to me to decide.

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.

W has brought its complaint through a representative. But for ease of reading, I'll only refer to W in this decision, even when referring to evidence or arguments put forward by its representative.

Having carefully considered the evidence and arguments, I agree with the conclusions reached by our investigator. I'll explain why, addressing the claim decline and mis-sale issues separately.

But first, for completeness, it isn't in dispute that by a strict interpretation of the rules which govern our service, this complaint was brought out of time. But NFU has consented to our service considering the complaint, and so I'm satisfied we have the necessary power to do so.

Claim decline

NFU says the pre-purchase report W obtained, and a design, access and planning statement obtained as part of planning permission to redevelop the site, show that W was aware of the poor condition of the building. NFU says it wasn't made aware of the condition of the building at inception or subsequent renewals. Had it been aware, it says it would have offered reduced storm damage cover. However, NFU says it has not sought to pursue any potential remedies for material non-disclosure. Rather, it is simply declining the claim based on the following policy exclusion within the policy wording:

"8. to BUILDINGS, glasshouses, greenhouses or structures clad with plastic or polythene, if they are not in a good state of repair, or to PROPERTY contained in any of them".

When our service considers complaints about storm damage claims, we take into account the following questions, and if any of the answers are *no* then it's likely a claim won't succeed:

- Were there storm conditions?
- Is the damage consistent with storm type damage?
- Was the storm the main or dominant cause of the damage?

NFU doesn't dispute there were storm conditions. But for completeness, I've also checked the weather records myself for the time. I think there were storm conditions at the time, so I've gone on to consider the next two questions.

The building in question suffered significant damage. Metal sheeting was ripped from the frame, some timber posts snapped and the building itself moved. This type of damage could be caused by severe storm force winds. So, this potentially satisfies question two.

NFU has declined W's claim on the basis that the building was in a poor state of repair. So, essentially, it's arguing that the storm was not the dominant cause of damage. Rather, it says, the storm merely highlighted the existing poor condition of the building.

I've thought carefully about this argument, and about all the evidence and arguments which have been put forward. Having done so, I consider that NFU's decision to decline the storm damage claim is in line with the terms and conditions of the policy and is fair and reasonable in the particular circumstances here.

I say this because it's clear from the pre-purchase survey, the design, access and planning statement, and all of the post loss reports I've seen, that the building was nearing the end of its life and/or was in a poor state of repair.

In fact, the pre-loss survey suggests that the building was already very close to, or even already at, the end of its useful life by the time of the claim. And the post loss reports highlight rotten timber framework, which would clearly have weakened the fixings of the metal sheetwork which blew off during the storm and the posts which broke and moved. So, while I'm aware this was a significant and well publicised storm, I don't think the wind speeds reported would be likely to have caused such significant damage to the type of building being claimed for, had it been in a good state of repair as required under the policy terms.

So, taking all the evidence into account and on the balance of probabilities, I'm persuaded that the poor condition of the building, rather than the storm, was more likely the dominant cause of the damage. Therefore, the answer to the third question we consider when deciding complaints about storm damage claims is no. In these circumstances, I consider it fair and reasonable for NFU to rely on the policy exclusion it has done so, to decline W's claim.

Mis-sale

Following the decline of the claim for storm damage, W has argued that the policy was mis-sold. W says NFU, via its agent, was aware of the condition of the building. They say cover should not have been provided if they would never have been able to benefit from it. They've also said that NFU's agent disagrees with their claim decision and told them he thought the claim should be covered.

I've seen the statement from NFU's agent. He does mention not being concerned that the building was at imminent risk of collapse, but I'm not persuaded that this is the same as saying the buildings were not old or nearing the end of their useful life – as suggested by the pre-purchase survey. I'm also mindful the agent said he hadn't been inside the relevant building in several years. And I'm mindful that NFU's agent is not an engineer or chartered surveyor, and that his role was to assess the risk the site poses, in its entirety, rather than to provide an expert structural assessment of individual buildings on site.

As a commercial customer, the onus was on W to provide NFU with a fair presentation of the risk, at inception and at each renewal, which includes all material circumstances which it knew, or ought to know would be material to NFU's decision to provide a policy. And given the content of the pre-purchase survey, and the design access and planning statement, I'm satisfied W was aware of the building's condition and predicted maximum lifespan.

I'm also of the opinion that the policy literature W was provided with made clear W's responsibility to maintain the property in a good state of repair, and the fact that exclusions for storm cover included damage to buildings not in a good state of repair – which would have shown the importance of the buildings' condition in order for it to be covered.

I do fully appreciate that the pandemic prevented the planned redevelopment of the site, which would have left the buildings in a good state of repair, and I don't think W could have done anything about that. But as the works could not go ahead, the building was left in a poor state of repair for longer than planned, and so was in that poor condition at the time of the storm.

So, taking everything into account, I'm not persuaded that NFU mis-sold the cover to W despite its agent visiting the property. I think W was ultimately still responsible for declaring the condition of the buildings to NFU, and/or for maintaining any buildings on cover in a good state of repair in order for them to be covered, which I think it failed to do.

That said, NFU has accepted that had it been fully made aware of the condition of the building, it wouldn't have provided storm cover. So, it accepts that W could never have benefited from that part of the policy. Because of this, it has offered to return the premiums W paid for that part of the policy since inception.

NFU's offer here goes beyond anything I would have recommended, and so I think it is fair and reasonable in all the circumstances.

My final decision

For the reasons I've explained above, I do not uphold W's complaint against The National Farmers' Union Mutual Insurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 27 February 2024.

Adam Golding
Ombudsman