

The complaint

Mr and Mrs L, trading as a partnership I will refer to as F, complain about the sale of their commercial insurance policy by The National Farmers' Union Mutual Insurance Society Limited (NFUM).

They say that as a result of NFUM's failure to sell them a suitable policy, they have not been able to successfully claim for losses they suffered as a result of the COVID-19 pandemic.

What happened

The following is intended only as a brief summary of the events. Additionally, whilst other parties have at times been involved, I have just referred to F and NFUM for the sake of simplicity.

F operates primarily as a holiday let accommodation and are also listed on their insurance as landowners and livestock owners. The complaint concerns the sale of a policy in late 2019. NFUM met with F, discussed their demands and needs, and recommended a policy. F have said that one of the key covers they needed was for business interruption. The recommended policy did have business interruption cover. However, when F's business was interrupted in March 2020 as a result of the COVID-19 pandemic, NFUM declined their claim for their losses.

A separate complaint has been made, and considered by the Financial Ombudsman Service, relating to the decline of the claim. So, I do not intend to comment on this aspect which is a separate issue. However, broadly speaking, the claim was declined because the cause of interruption was not one covered by the policy that NFUM recommended.

The policy provided cover for interruption caused by a number of events. Primarily these were events that caused physical damage, for example fire, flood, etc. Several extensions were also provided, including for the occurrence of certain diseases but not including COVID-19. F complained that NFUM did not recommend a suitable policy. They also say that they were reassured at the time of the sale that the policy would cover any cause of business interruption.

Ultimately, NFUM accepted that it should have recommended an additional aspect of cover, Cancellation of Advance Booking (COAB) cover. But said that the general business interruption cover was suitable for F's needs at the time of the sale.

F remained unhappy and brought their complaint to the Financial Ombudsman. Our Investigator agreed that NFUM had not demonstrated that the sales process had been thorough enough. But felt that even if a more detailed examination of F's needs had been carried out, it would not have led to NFUM concluding the policy was unsuitable.

F remained unsatisfied, and their complaint has been passed to me for a decision.

Having carried out an initial review of the evidence, I was minded to largely agree with the outcome the Investigator reached. However, I felt that NFUM should compensate F £200 for

the distress and inconvenience caused by a lack of clarity when the policy was sold. F did not consider this appropriately compensated them and remained of the view that the policy had been mis-sold and that their full losses should be covered, as well as “suitable compensation”.

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 am not minded to uphold F’s complaint in full. And consider that £200, as well as the backdated COAB cover, is appropriate redress in the circumstances. I’ll explain why.

As I say, this complaint is limited to considering the actions of NFUM at the point F’s policy was sold. There is a limited record of exactly what was discussed at this time. However, it seems that NFUM visited F’s premises, gathered some information on their demands and needs, and then recommended the policy that was taken out.

F have said that there was a detailed discussion of business interruption cover at the time. They have referred to previous events that apparently caused an interruption to the business, that meant this was an important area of cover for them. I have no reason to doubt that this discussion took place.

F have said that as part of the discussion they were told by NFUM that the business would be covered for interruption by any cause. Without any detailed record from the time – as might exist in the form of a recording for a telephone sale – it is not possible for me to know whether this was said or, if so, what context this comment was made in.

F have provided a signed ‘witness statement’ and have said that this statement would be accepted by a court. They have also indicated that if I do not fully agree with the content of this, I would be implying that I do not believe this statement to be truthful. However, firstly, I should say that the Financial Ombudsman Service is not a court of law, and do not operate on an adversarial basis. My role is to consider all of the circumstances of the complaint and come to an outcome on a fair and reasonable basis. This means taking into account all of the evidence, and this includes the statement F has provide. As part of weighing up this evidence though, I need to think about a number of factors including when the statement was made – memories can and do fade over time.

I will add at this point that F has recently provided details of the recent conversations it has been having with NFUM about a current renewal and has referred to elements where it does not consider matters to have been explained clearly. I have noted these, but have not given them great weight as they do not directly relate to the circumstances of the complaint. Even if there is a lack of clear explanation currently, this does not mean this was the situation several years ago.

That said, largely speaking, I am persuaded by the content of F witness statement. F have been consistent and have provided a plausible explanation for the basis of the conversation having taken place. NFUM has said that it did not make the comment about all causes of interruption being covered. To an extent, I do find this persuasive. But, as I say, F have been consistent in their submissions on this point. And it seems more likely than not that there was a conversation about business interruption cover.

It is also clear, from the fact that NFUM has admitted COAB cover ought to have been included in the recommendation, and that there were other administrative problems with how

the policy was set up, that there were problems with the sale.

So, I consider it more likely than not that, at minimum, NFUM was not as clear as it could have been on this point. And that this may have led F to believe the cover they were taking out was broader than it actually was.

However, it is then necessary to consider the detriment of any failures here. Largely, this comes down to considering whether different cover ought to have been recommended, and what the impact of not providing appropriately clear, fair and not misleading information would have been.

NFUM has already provided back-dated COAB cover which has provided a settlement up to the maximum limit it gives. I appreciate this is only a small proportion of F's overall losses. But NFUM's action here addresses any failure to recommend and include this cover at the point of sale. Had this cover been recommended and included, F would have the same benefit from this cover as has now been given. So, I consider this aspect has been appropriately addressed.

In terms of F's wider losses as a result of business interruption, the question is effectively did they have a need – at the time of the sale – for insurance that ultimately would have covered the specific circumstances of the COVID-19 pandemic.

No insurance will cover every eventuality. Business interruption policies tend to be based initially on providing cover where physical damage due to certain events has caused an interruption to the business – for example where there has been a fire or flood. Additional cover is then often added to provide for 'non-damage' situation. This includes situations where disease occurs. This can be seen in relation to F's policy which did provide cover titled Human Diseases.

The Human Diseases clause provides cover where certain diseases occur at the insured premises which leads to the premises being closed or restricted in use. No physical damage is required in order for this clause to be activated. However, the cover is limited to a specified list of diseases, which does not include COVID-19. It is not surprising that COVID-19 is not included in this list; at the time the policy was sold this disease had not been identified. Other types of similar clause however provide broader cover, including for any contagious or infectious disease. Had F taken out one of these policies, it may have been able to successfully claim for its losses.

So, the question then becomes, did F have a need for such cover at the time of the sale?

I will stress again that at the time of the sale, in late 2019, COVID-19 had not been identified and was not a risk that could be specifically predicted. That some insurance policies have provided cover for the situation that then developed is largely a result of fortuity.

The holiday accommodation business F ran did not seemingly have a specific need for such broad cover for disease. As I've said, some cover was ultimately provided, but this was limited to certain specified diseases. This included diseases such as Legionnaire's Disease which could foreseeably have caused an interruption to their business. This was a foreseeable demand and need that F had in late 2019. But this was a demand that the policy ultimately met.

F have not provided evidence that persuades me that cover in the event of an as yet unidentified disease causing an interruption to their accommodation business was a need they had in late 2019.

I accept that they may have been led to believe that the business interruption cover they had would cover all eventualities. However, I am not aware of any policy that does provide such cover that is available on the open market. And given I do not consider they had a need for the widest possible disease cover, I don't think the recommendation they received was inappropriate or that they would have taken different action had clearer information been provided. So, I don't think NFUM should compensate them to the value of their claim.

The likely lack of clear, fair and not misleading information over the scope of business interruption F were taking out seemingly led them to believe that they would be covered when the COVID-19 pandemic arose. And on discovering that their policy did not cover the circumstances they found themselves in, I think F suffered distress and inconvenience that otherwise could have been avoided. The situation of not having cover was no doubt distressing, but this was made worse by their expectation that there would be cover. And I think NFUM should compensate F for the latter part of this.

I recognise that an award of £200 is of limited relief given the size of F's losses. But this is limited to compensating them for the loss of expectation they experienced. I also appreciate that the outcome of this complaint will not be welcomed by F, but hopefully I have provided them with a thorough explanation of why I have come to this decision.

Putting things right

NFUM has amended and back dated F's policy to include COAB cover.

NFUM should also pay F £200 compensation to reflect the avoidable distress and inconvenience experienced.

My final decision

My final decision is that I uphold in part the complaint of Mr and Mrs L, trading as F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 27 October 2023.

Sam Thomas
Ombudsman