

The complaint

Mr H complains that The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual voided his horse and rider policy, retained his policy premium and refused to pay his claim.

My references to NFU Mutual include its agents.

What happened

On 10 August 2022 Mr H telephoned NFU Mutual for a quotation for a horse and rider insurance policy. He said he had not seen or bought the horse at that point. After warning him about the importance of answering to the best of his knowledge, NFU Mutual asked several questions about the horse including this one:

"As far as you know she's [the horse] not currently lame or off work or suffering from any illness, injury or condition?"

Mr H answered *"no, not to our knowledge"*.

NFU Mutual quoted a premium for the policy. It said that it did not require the horse to be vetted but would require further information including the horse's registered name and passport number.

On 6 September 2022 Mr H called NFU Mutual to say he'd bought the horse and to take out the policy.

In mid-November 2022, Mr H's horse was seen by a vet who diagnosed gastric ulcers. Mr H made a claim to NFU Mutual for the treatment costs.

In reviewing the claim NFU Mutual noted that the horse had failed the vetting on 16 August 2022 due to bilateral low level hind limb lameness. NFU Mutual said that Mr H had not told it about the failed vetting in response to its 6 September 2022 question about *"any changes"*.

NFU Mutual said Mr H had made a reckless qualifying misrepresentation, which entitled it to void his policy from its start (inception) date and treat the policy as though it had never existed, retain his premium, and not pay his claim.

Mr H complained to us saying, in summary, that NFU Mutual had not asked him specific details about what changes it had wanted to know about.

Our Investigator did not uphold the complaint. Referring to the relevant law, she concluded that Mr H had failed to take reasonable care not to make a misrepresentation when NFU Mutual asked him whether there had been any changes since his initial phone call. NFU Mutual would not have offered Mr H a policy had it been aware that the horse had failed its vetting due to lameness. So our Investigator concluded that NFU mutual had been entitled to void the policy, retain the premium and not pay Mr H's claim.

Mr H did not agree with our Investigator's conclusions and asked for a review as he is

entitled to do under our rules. He said, in summary:

- He did not know about any issues with the horse's health when calling NFU Mutual in August 2022 and he answered its questions to the best of his knowledge and belief. NFU Mutual told him it did not require a vetting certificate, so this calls into question NFU Mutual's statement that it would have refused cover based on the vetting certificate.
- The quotation and inception call took place around a month apart. NFU Mutual was at fault for not asking specific questions. Had it done so he would have given specific replies.
- The vetting certificate did refer to lameness but this was of a minor nature and his child has been able to ride the horse without any problem. He made no attempt to hide the vetting certificate when making the claim, which did not relate to lameness.
- The Investigator had not explained how she had applied the relevant law and she did not mention various submissions he had made to us.

Mr H also referred to a website article about misrepresentation, which explained the importance of insurers asking questions to prompt consumers to disclose information they require for their risk and price assessment.

The complaint was passed to me for review. I asked NFU Mutual for more information about the questions it asked and Mr H's responses. I set out the key points and my findings in my provisional decision. I said:

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

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to take reasonable care, the insurer has certain remedies provided the misrepresentation is, what CIDRA describes as, a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation. The insurer does not have to show that the misrepresentation is linked to any claim made under the policy.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care, including how clear and how specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

NFU Mutual had not suggested that there was any misrepresentation made by Mr H during the 10 August 2022 call when he asked for a quotation for the horse and rider policy. Indeed, the horse was vetted on 16 August 2022, so this was after the quotation call. The vetting certificate and the linked vet's clinical notes show that the horse failed the vetting due to bilateral low level hind limb lameness. Mr H purchased the horse the following day.

But NFU Mutual thinks Mr H failed to take reasonable care not to make a misrepresentation because he did not tell it that the horse had failed the vetting during the 6 September 2022 call.

Having listened to the 6 September 2022 call recording, I am satisfied that Mr H did not tell

NFU Mutual that the horse had failed the vetting on flexions, as he'd suggested to NFU Mutual during his later conversations with it about NFU Mutual voiding his policy.

So the key question I must decide is whether Mr H took reasonable care not to make a misrepresentation during the 6 September 2022 call. Having carefully considered all the evidence I have received I don't currently think he did fail to take reasonable care. I will explain my reasons:

NFU Mutual began the 6 September 2022 call by asking Mr H:

"Were there any changes or queries or anything else on this one before we set it up?"

Mr H had replied:

"No, no changes I think...I can't remember what we'd gone for now".

The agent went on to outline the policy cover, being loss of animal and vet's fees.

In response to my queries, NFU Mutual now accepts that its question was not clear or specific. But it said its agent had asked a question and had given Mr H the opportunity to tell it about the vetting of the horse. The agent had outlined the policy cover because Mr H had answered "no" to her question.

NFU Mutual also said it asked not only about "any changes" but also whether Mr H had "any queries or anything else" which gave him ample opportunity to tell it about the vetting or ask any questions. The agent went on to ask "any other questions or queries?" before setting the policy up and "any changes to the information you have given me?" NFU Mutual said it was clear (from these questions) that if the information had changed from that given previously Mr H should have told it. And NFU Mutual also asked about "any final queries or questions" and "any queries at any stage give us a call". So, it says that Mr H was given several opportunities to ask questions or tell NFU Mutual additional information.

NFU Mutual also added that there would be no expectation for it to repeat the warning about the importance of answering questions to the best of Mr H's knowledge. It added that all the documents it issued clarified that changes did need to be told to it.

I've thought about what NFU Mutual has said about the other opportunities it gave Mr H to tell it about the vetting. But I don't think any of the questions it asked Mr H were sufficiently clear or specific to capture the information it wanted to know about.

NFU Mutual did not repeat the questions it had asked Mr H during the August 2022 quotation call despite Mr H saying that he couldn't remember what he'd "gone for" in the earlier call and the agent acknowledging that a few weeks had passed when checking if the quotation price was still valid.

In particular, it did not repeat its August 2022 question: "As far as you know she's not currently lame or off work or suffering from any illness, injury or condition?"

NFU Mutual said it asked Mr H to tell it about "any changes to the information you have given me" but this question was not asked in the context of information given in the 10 August 2022 call. Rather NFU Mutual said that Mr H must tell it "in the future" if there were any changes to the information he had given it.

As well as acknowledging the time that had passed since the quotation call, NFU Mutual

knew that Mr H had not seen the horse at the time of the quotation call. So, if it wanted to know whether his answers to the questions it had asked him in the August 2022 call had changed since he'd seen and purchased the horse then I think it should have said that and repeated those questions.

NFU Mutual said it gave Mr H plenty of opportunities to tell it about the vetting and to ask any questions. I note that he did ask questions in the call, about the excess and whether his child would be covered as the rider of the horse.

I don't think that giving Mr H the opportunity to ask questions means that Mr H should have realised that NFU Mutual wanted to know about the vetting.

NFU Mutual says that it sent Mr H information about his policy. But he told NFU Mutual that he had not received the documentation except for the information about the premium being taken. In any event, he had been told NFU Mutual did not require vetting given the level of cover and that he should tell it about changes in the future. So, it's not clear that the outcome would have been different had he received the policy documents.

I am currently of the view that in answering the questions that NFU Mutual asked him, Mr H took reasonable care not to make a misrepresentation. So I think the fair and reasonable outcome to this complaint is for NFU Mutual now to reinstate the policy, pay his claim/s and take the additional steps outlined in the 'My provisional decision' section below.

If Mr H has made a claim for his horse under any replacement insurance policy during the 12-months starting 6 September 2022 then he should provide details of that policy and the claims in response to this provisional decision. I will take this into account to avoid any duplication of claims payments."

In the "My provisional decision" section I said, in summary, that NFU Mutual should assess Mr H's claim/s and pay them, subject to any excess, the policy limit and the remaining policy terms and conditions, less any premium outstanding for the relevant policy year. I said NFU Mutual should pay simple interest on the remaining claims payment at the simple rate of 8% per year. I also said that it should remove any information registered about the policy being voided and it should give Mr H a letter saying that the policy was voided in error.

Responses to my provisional decision

NFU Mutual responded with some additional comments. It said that:

- On page 8 of its new business documents (the statement) it clearly said, under "About your horse":

<i>"Vetted in the last 12 months of inception date</i>	<i>No</i>
<i>Currently lame or off work due to illness or injury</i>	<i>No"</i>
- Mr H's answers of "No" were clearly displayed, just above a warning that included the following information under the bold heading "Important Information":

"Your insurance cover is based on the information you have given us, as shown in this Statement of Insurance and your Insurance Schedule. Please check that this information is correct, as failure to disclose accurate information could invalidate your insurance or result in a claim not being paid."

The "Important Information" section went on to ask the policyholder to contact NFU Mutual within the next seven days if any details were wrong or missing, which may have resulted in a revised premium or terms being offered.

- The onus was on Mr H, the policyholder, to check his paperwork was correct. This is the reason that NFU Mutual made the decision to "reckless void" the policy.

Mr H responded to say that he had not obtained replacement insurance and that he had had further expense. In response to our question about this, he said the further expense had been transport for his horse to the vets and additional stabling due to his horse needing to be on box rest.

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.

I've considered the comments that I have received in response to my provisional decision. Having done so, I am not persuaded to depart from the findings that I reached in my provisional decision. I confirm them here for the reasons given in my provisional decision and below.

NFU Mutual has not commented on the findings that I made on the questions it asked during its telephone calls with Mr H in August and September 2022. But for completeness, and for the reasons I've already explained I find that Mr H took reasonable care not to make a misrepresentation during those calls.

NFU Mutual has drawn my attention specifically to the statements on page 8 of its new business documents.

I appreciate the point that NFU Mutual is making about the statements about vetting and lameness and the warning on page 8 of its new business documents.

But Mr H had answered NFU Mutual's questions about vetting and lameness with reasonable care in the August 2022 call. He had been told that NFU Mutual did not require vetting. NFU Mutual did not repeat its questions about vetting and lameness during the September 2022 call. During the 11 January 2023 call when NFU Mutual asked Mr H some additional questions following his claim, he told NFU Mutual unprompted that he had not received any documentation from NFU Mutual except for the information about the premium being taken.

Overall, I don't consider that Mr H made a misrepresentation in the absence of clear questions during the second call of September 2022 and given his comment about not receiving documents from NFU Mutual.

Mr H has told me that he has not taken out replacement insurance. So he has not paid a higher premium due to the NFU Mutual policy being voided. With regards to the additional transport to the vet and stabling, he will need to submit an additional claim to NFU Mutual for it to assess and pay, subject to any applicable excess, policy limit and the remaining policy terms, with 8% interest as set out below.

Putting things right

I require The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual to take the following steps to resolve the complaint:

- To reinstate the policy from its inception date of 6 September 2022 for that policy year; and
- To assess Mr H's claims under the policy for the policy year starting 6 September 2022 and to pay them subject to any excess, policy limit and the remaining policy terms and conditions, less any premium outstanding for the policy year; and
- To add simple interest* at the rate of 8% per year to the resulting claim payment/s,

from the date Mr H paid the vets' fees and additional costs to the date of settlement; and

- To remove any information it has registered on any internal or external database to say that Mr H has had a policy voided/cancelled; and to give Mr H a letter confirming that the horse and rider policy was voided/cancelled in error so that Mr H does not have to answer 'yes' to any question asked by a future insurer about policy voidance or cancellation.

*If NFU Mutual considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I require The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual to take the steps set out in the *"Putting things right"* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 November 2023.

Amanda Maycock
Ombudsman