

The complaint

J, a limited company, says The National Farmers' Union Mutual Insurance Society Limited (NFU) turned down a claim it made on its business insurance policy. J complains that's because the policy NFU sold it wasn't suitable for its needs.

What happened

In 2022 a customer of J's said a product it sold hadn't performed as expected. And it had suffered a loss as a result. J accepted this was because had it supplied the wrong type of product. It claimed on its policy with NFU for the value of the claim the customer had made against it. NFU said the product liability section of the policy didn't cover financial loss (it could cover damage to material property but that wasn't the case for this claim).

J said NFU hadn't met its needs or provided it with clear information about what the policy covered when the policy was sold and renewed. NFU accepted the policy it advised J to take out wasn't the most suitable for it. However, the correct policy wouldn't have covered the claim J subsequently made and it didn't have a policy which would have done so. So it didn't think J had lost out as a result of its error. However, it accepted it had taken too long to investigate and respond to J's concerns and offered to pay £250 in recognition of the inconvenience this caused.

During our investigation J provided a policy it said would have covered the claim it made. In his most recent view our investigator explained that (based on information supplied by J's broker) he was satisfied it would have done. And he thought if properly advised J would have taken it out. So J would have been covered for the claim it subsequently made.

He said NFU should reimburse J the amount it paid to resolve the claim against it (plus interest) less the difference in premium between the policy it did have and the one it should have had. He also said it should pay £250 for the inconvenience J had been caused in dealing with these matters

NFU didn't agree. It didn't think the evidence showed J would have been able to obtain alternative cover; the quotation didn't take into account an assessment of the actual risk and there remained ambiguity as to whether the terms would in fact have covered the claim J made.

I issued a provisional decision on the complaint last month. In summary I said:

I don't think it's in dispute J's policy with NFU didn't cover the claim it made in July 2022. The complaint J has made is about what happened when the policy was sold and renewed. So I've considered whether NFU did what it should when that happened and, if it didn't, whether J lost out as a result.

I can see this was an advised sale. For an advised sale the relevant rules say NFU is required to take reasonable care to ensure the suitability of its advice. To do so the rules require it to establish a customer's demands and needs using information readily available and by obtaining further relevant information from a customer.

I think it's accepted NFU didn't do what it should here. It doesn't appear to have fully understand the nature of J's business and its insurance needs when the policy was set up. And that led to it recommending an office policy rather than a more appropriate wholesaler's policy. I don't think the policy it recommended was one J couldn't benefit from; the cover included contents insurance, employer's liability cover and public and product liability cover. But it wasn't the most suitable policy NFU could have recommended and so there has been a failing here.

I've gone on to think about whether J has lost out as a result. And in particular whether, but for the failing by NFU, it would have had cover in place for the claim it subsequently made. NFU says even if had recommended the correct policy to J that wouldn't have provided cover for that claim. And it didn't have a policy available that would have done so. I haven't seen anything to show that's incorrect.

However, the information J's now provided does suggest a policy is available from another insurer which might have provided cover for the claim it made. NFU has queried whether it would have done and whether an insurer would actually have offered J that cover. But I don't think that's an issue I need to determine in relation to this complaint. That's because even if I accept J could have obtained a policy with cover for the claim it subsequently made, I'm not satisfied that's something it would have done if properly advised by NFU. I say that because when J took out cover with NFU in 2016 there was discussion over whether it wanted cover for financial loss and J decided against taking this out. A letter summarising the cover that had been arranged said:

"Regarding the cover that is provided under Public and Product Liability, as mentioned above this only applies in respect of amounts which you become legally liable to pay to members of the public following them suffering accidental injury/illness or loss of/damage to their property as a result of you operating the business and selling your products. Specifically excluded from this cover is financial loss, which your customer may incur following you either; selling him the incorrect [product]; or the [product] failing to germinate; or your customer being sent the incorrect product. We can arrange Financial Loss insurance, and I will forward details of this in due course. We discussed this matter during our conversation on 20 July, and you were happy with there being no Financial Loss insurance operating at the current time."

I recognise the overall advice given to J at that time wasn't correct because NFU didn't recommend the most suitable policy. But it nevertheless made clear to J the policy it had recommended didn't offer financial loss cover. And J would need to take out separate cover if it wanted that. I appreciate the policy NFU suggested wouldn't in fact have covered the claim J subsequently made. But I think the key issue here is that, having been told it didn't have cover for financial loss, J didn't take out a policy which would cover that. I've seen nothing to show it would have made a different decision if the correct policy had been recommended to it by NFU. The advice in relation to cover for financial loss would have been the same; the policy didn't cover this. I think it's most likely that J would therefore have made the same choice and decided against taking this cover.

I think that's supported by the fact J contacted NFU in 2019 because a customer had indicated they were unhappy with a product supplied by J which hadn't performed as it should. J was concerned the customer might take action against it for the loss it had suffered of around £5,000. NFU's notes say it advised J to speak to the provider of its legal expenses insurance policy but also explained the insurance J held with it wouldn't cover a loss of this type. NFU offered to go through J's insurance in more detail but that offer wasn't taken up. That indicates to me J was aware its insurance didn't cover losses of this nature and was happy with the cover it had in place.

J says NFU should have carried out more recent reviews of the cover it had in place which would have identified the issue with policy coverage. NFU has said J's policy fell outside of its review framework meaning there was no need for an annual review. However, I can see the adviser J was dealing with accepted he should nevertheless have carried out a review and apologised for not doing so.

But even if a review had been carried out, I don't see that would have changed things. As I've already explained I think J would have been clear its policy didn't cover financial loss to a customer based on the information provided in 2016 and again in 2019. And the renewal documentation that J was sent in 2021 (the renewal prior to the July 2022 claim being made) said:

"Please read the enclosed documents thoroughly and make sure the cover still meets your needs. For your insurance to remain valid you must tell us about any changes in your circumstances. You'll find guidance under 'Changes to tell us about'. If you're not sure whether your change is relevant, please tell us anyway"

J didn't tell NFU know about any changes to its circumstances or needs. And while I appreciate it has now sought to take out cover that could cover a future claim that's following the claim made against it in July 2022. That isn't something it would have been aware of at the point a review would have taken place. So even if such a review had happened, I don't think it would have led J to make different decisions about its insurance requirements. Given all that I don't think NFU does need to reimburse the amount J paid to its customer because I don't think that loss results from what NFU got wrong.

But if I'm wrong about that (which I don't think I am) I still don't think NFU would need to do anything further in relation to this. Even if I was satisfied J would have taken out a policy that would have covered the claim it subsequently made if correctly advised in 2016, it would still have needed to pay the premiums for that. So any amount NFU was required to pay in recognition of a financial loss to J would need to be offset against those premiums.

When J contacted NFU to make its claim it said the potential loss to its customer was around £8,000. The quoted cost of the policy it's now found is £4,760. If J had taken out that cover in 2016 it would therefore have paid a total of around £28,500 if the premium had been at that level in 2016 and subsequent years.

I appreciate premiums might have been lower in earlier years but even if that is the case it's likely the total would still have been significantly more than any loss J suffered as a result of the claim against it (based on the information it gave to NFU about this). So there wouldn't be any financial loss payment NFU would now need to make even if it could be shown that, but for its failing, J would have had a policy in place that would have covered the claim against it.

However, I do agree J has been caused inconvenience by what NFU got wrong. It took NFU longer than it should both to investigate the circumstances of what happened and to respond to the complaint J had made. NFU has offered to pay £250 in recognition of that but I think J's directors have had to put a reasonable amount of time into resolving this matter some of which would have been avoided without the identified failings by NFU. I think a total of £500 compensation would better reflect the inconvenience J was caused by what NFU got wrong.

Responses to my provisional decision

NFU said it didn't have any further comments to make. J 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.

As neither side has provided any further comments, I don't have any reason to alter the conclusions I set out in my provisional decision.

My final decision

I've decided to uphold this complaint. The National Farmers' Union Mutual Insurance Society Limited will need to pay J £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 6 December 2023.

James Park
Ombudsman