

## **The complaint**

H complains that The National Farmers' Union Mutual Insurance Society Limited (NFU) mis-sold their commercial property insurance policy.

## **What happened**

H, a hospitality business, took out a commercial property insurance policy with NFU in 2019. In November 2021 H contacted NFU to make a claim for storm damage to a marquee, gazebos, and an above ground pool.

NFU subsequently declined the claim on the basis of a policy exclusion for storm damage to moveable contents in the open. H complained to NFU that they'd specifically asked for cover for these items, and other items, kept in the open.

NFU looked into matters and accepted that they'd incorrectly led H to believe these items were covered. NFU offered £200 compensation for this. However, they said they wouldn't have ever been able to provide cover for them, and it would be unlikely H could have secured cover elsewhere. So, whilst they offered £200 compensation, they maintained the claim decision for the damaged items.

H was unhappy with NFU's position and approached this service.

One of our investigators looked into things and upheld the complaint. He said it was accepted by NFU they had given incorrect advice. But he wasn't persuaded H wouldn't have been able to obtain cover elsewhere if NFU had advised them correctly. So, he said NFU should reimburse the costs H incurred in replacing the gazebos and above ground pool, with 8% simple interest added, and deal with the marquee part of the claim.

NFU didn't agree so the case was 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.

Having done so, I've reached the same outcome as our investigator.

H told NFU that they were looking to move from their current insurer as they wanted someone more local, who could come out and look at the property and their insurance needs including cover for furniture, a marquee and other items outside. NFU visited H's property and drew up an initial quote. And over the course of several phone calls, policy cover was discussed, finalised and arranged.

It was an advised sale and NFU said the policy was suitable for H's needs. In the calls between NFU and H before the sale completed, NFU also confirmed that the outdoor items which H specifically needed cover for were insured under the policy.

However, when the marquee, gazebos and above ground pool were damaged during a storm, NFU declined the claim on the basis of the following policy exclusion:

*"Storm, hail and weight of snow excluding DAMAGE:*

*....*

*4 to fences, gates, hedges or moveable PROPERTY in the open other than TRAILERS"*

NFU accept that H was mis-led when taking out the policy and they should have been told that there was a policy exclusion for items in the open, but instead they were incorrectly told the items would be covered. NFU apologised for what happened and offered £200 compensation.

However, despite NFU accepting they incorrectly advised the items would be covered, NFU hasn't agreed to cover them. This is because NFU say they wouldn't ever have been able to cover them, and other insurers wouldn't either. So, they say H hasn't had a loss of opportunity to get cover, so they say £200 compensation is sufficient to put things right.

Like our investigator, I don't think this is fair. NFU hasn't demonstrated H would never have been able to obtain cover elsewhere. NFU may not have been able to provide this themselves, and whilst they have provided terms of a different insurer who has a similar exclusion to NFU, this doesn't demonstrate H would never have been able to obtain this cover elsewhere across the insurance market.

In my view, if NFU had told H they couldn't cover this, then H would most likely have looked to secure this elsewhere, given it was a key part of cover which H required and something they explained from the outset to NFU, so clearly of key importance to H.

Whilst some insurers might not have provided that cover, I don't think it's been shown that no other insurer would have, for example via specialist insurers, or via perhaps an 'all risk' type policy. So, I don't agree with NFU that there hasn't been a loss of opportunity to get cover.

In fact, during the quote negotiation stages, H told NFU that their previous insurer had agreed to cover the items in order to retain H as a customer, but it was the local aspect and being (incorrectly) told they would have the cover which persuaded H to move to NFU, despite them being more expensive.

Therefore, I'm satisfied NFU need to do more than simply provide £200 compensation to put things right. Instead, they also now need cover those damaged items which they told H were covered from the outset.

H has confirmed they have already replaced the gazebos and above ground pool. So NFU will need to reimburse these costs. 8% simple interest will also need to be added to the reimbursement from the date H paid the invoice to date of reimbursement.

H hasn't been able to afford to replace the marquee yet, so NFU will now also need to deal with this part of the claim by either replacing or paying to replace it, and in line with the remaining policy terms (including applicable policy limits and excesses).

### **My final decision**

It's my final decision that I uphold this complaint and direct The National Farmers' Union Mutual Insurance Society Limited to:

- Pay the £200 compensation already offered if they haven't already done so.
- Reimburse the costs H incurred in replacing the gazebos and above ground pool.
- Add 8% simple interest\* to the reimbursement from the date H paid the invoices to date of settlement.
- Deal with the marquee part of the claim in line with the remaining policy terms.

\*If The National Farmers' Union Mutual Insurance Society Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell H how much it's taken off. It should also give H a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 25 December 2023.

Callum Milne  
**Ombudsman**