

The complaint

Mr and Mrs P, Mr P1 and Mr P2 (trading as P) are unhappy The National Farmers' Union Mutual Insurance Society Limited turned down a claim they made on their legal expenses insurance policy. As the complaint has been brought by Mrs P, for ease I'll refer to her in this decision.

What happened

In November 2022 Mrs P contacted NFU as she said an item of farm equipment she'd ordered had been damaged on delivery. She wanted her legal expenses policy to assist in bringing a breach of contract claim against the seller. NFU asked one of its panel solicitors to assess whether the claim had reasonable prospects of success (a requirement of the policy).

Mrs P subsequently said she'd been taken to court by the panel firm NFU approached and felt there was a conflict of interest. NFU asked an alternative panel firm to review the claim. It said there were difficulties in obtaining information from Mrs P but concluded in January 2023, based on the evidence it did have, the claim didn't have reasonable prospects of success. Having reviewed further information supplied by Mrs P the firm issued a revised assessment in April but still thought the claim was unlikely to succeed.

Mrs P was unhappy with that and provided further information to NFU. It asked the panel firm to review this, but its view didn't change. NFU said it wouldn't be providing cover for the claim. It advised Mrs P what she could do to challenge the panel firm's assessment.

Our investigator thought NFU was entitled to rely on the legal opinion provided by the panel firm. So she thought it had fairly turned down the claim. And if Mrs P was unhappy with the action of the panel firm that was something she could potentially raise with the Legal Ombudsman.

Mrs P didn't agree. She thought NFU should take responsibility for the complaints she'd made as her insurance contract was with it. She disagreed with the advice provided by the panel firm and in particular its conclusion that she didn't have a contract with the seller of the equipment. And she raised issues relevant to other claims she'd made to NFU about related matters. So I need to reach a final decision.

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 appreciate Mrs P has a number of different claims with NFU. However, as our investigator explained, as part of this complaint we're only considering her concerns about the legal expenses claim she made for breach of contract in relation to the farm equipment.

Mrs P says NFU should take responsibility for all of the complaints she's made in relation to this. NFU is responsible for the actions of its claims handlers and so that's something I've considered in this decision. However, in relation to her concerns about the actions of the

panel solicitors we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP).

Those activities include regulated activities. “*Carrying out a contract of insurance*” is a regulated activity. That’s why we can consider what NFU (and its agents and claims handlers) did here. However, when acting in their legal capacity the panel solicitors aren’t carrying out a regulated activity (and their actions aren’t covered by any of the other activities we can consider). So Mrs P’s concerns about their actions aren’t something I can consider.

Turning to the actions of NFU the relevant rules and industry guidelines say it has a responsibility to handle claims promptly and fairly. It shouldn’t reject a claim unreasonably.

I’ve looked at the terms and conditions of Mrs P’s policy. This does provide cover for contract disputes but that’s on condition reasonable prospects of success exist for the duration of the claim. And the policy says that means “*for civil cases, the prospects that the INSURED PERSON will recover losses or damages (or obtain any other legal remedy that [claims handler] has agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%.*”

As an insurer isn’t a legal expert, we don’t think it’s in a position to carry out the prospects assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done, we think it’s reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case NFU did refer the matter to one of its panel firms for assessment. I appreciate there was some initial delay in that being progressed because of a conflict issue and difficulties in obtaining relevant evidence. But I don’t think that’s something NFU is responsible for. And I can see the assessment which was subsequently produced was carried out by a qualified lawyer whose areas of interest include contract disputes. I’ve read the assessment and I think it is properly written and reasoned. It addresses the claim made by Mrs P and gives reasons for why it’s unlikely to succeed. In particular it explains why it doesn’t think the delivery details she provided would represent a contractual term which the seller could be held responsible for breaching.

I appreciate Mrs P disagrees with that assessment, but I think it’s one NFU was entitled to rely on. And I can see it also advised her of what she would need to do if she wanted to challenge that assessment (obtain a contrary legal opinion from a suitably qualified barrister). I’m not aware Mrs P has done that and so I think NFU acted fairly and in line with the policy terms in declining to provide funding for the breach of contract claim she made.

My final decision

I’ve decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs P, Mr P1 and Mr P2 to accept or reject my decision before 13 March 2024.

James Park
Ombudsman