

The complaint

A limited company that I will refer to as C complains about the handling and decline by The National Farmers' Union Mutual Insurance Society Limited of its business interruption insurance claim, made as a result of the COVID-19 pandemic.

What happened

The following is intended only as a brief summary of events. Additionally, for the sake of simplicity, I have referred to The National Farmers' Union Mutual Insurance Society Limited and its agents as NFUM. I note that one of C's concerns is the involvement of other parties, but as these were acting as NFUM's agents, it is NFUM that is ultimately responsible.

C operates as an accommodation provider. The exact nature of this business is unclear, but it does seem to be agreed that paid for accommodation is provided to third parties on a short-term basis. C held a Home and Lifestyle insurance policy underwritten by NFUM, which included a section relating to Holiday Accommodation and related cover for loss of profit and for cancellation of advanced bookings (COAB).

In March 2022, C claimed for the loss of profit and COAB it had suffered as a result of the COVID-19 pandemic. C has complained about the length of time it took for an answer to be received and about the communications that NFUM provided during this period.

Ultimately though, NFUM declined the claim in April 2023. It said that as it considered the business was used solely as guest accommodation of visiting students from an international language school – and was not open to the general public for bookings, this was effectively a destination for school trips and fell outside the scope of the Holiday Accommodation cover.

C complained about this outcome and the handling of the claim. It also complained that its cover had been moved to a different policy.

NFUM apologised for the delays and communication issues, and offered C £450 compensation for this. However, it did not alter its decision on the claim and said that the policy had been migrated as the insured property was used for commercial purposes, rather than for personal use.

C brought its complaint to the Ombudsman Service. However, our Investigator did not uphold it. He thought that the reason the advanced bookings were cancelled was due to the restrictions placed on it, rather than because the guests had cancelled these. And he did not think the policy covered the claim in these circumstances. The Investigator also did not consider the rest of the policy provided cover for the rest of the claim.

Our Investigator also thought that NFUM had acted appropriately in deciding that it was no longer willing to offer C cover under the Home and Lifestyle policy, and migrating this to another, commercial policy. And that the £450 offered by NFUM for the claims handling issues was fair and reasonable in the circumstances.

C remained unsatisfied and its complaint was passed to me for a decision. I issued my

provisional decision on 5 April 2024. The following is an extract from that decision:

“The claim decision

The first issue I need to consider is whether C’s claim was appropriately declined.

In coming to my finding on this point, I have noted that NFUM has raised a number of concerns about whether the policy C had at the time was suitable for the circumstances of its business. However, it is notable that although it was discussed internally, the policy was not avoided by NFUM and so the claim needs to be assessed based on the terms of that policy. I would though add that there are some nuances to this that I will refer to below.

The first area of cover that I will refer to is the COAB cover. This provides cover where a guest cancels their holiday. There a number of specific reasons why this cancellation was needed, for cover to apply. However, in the circumstances of this claim, it seems that C cancelled the relevant bookings as it was no longer able to open to provide any services due to the government-imposed restrictions introduced as a result of the COVID-19 pandemic. Whilst I appreciate this was not a decision C had any choice over, I agree with the Investigator that this part of the policy would not provide cover in the circumstances.

However, the policy also provides cover for loss of profit where there is an interruption to the Holiday Accommodation business as a result of Human Disease. Human Disease is actually defined within the policy by reference to a specific set of diseases, and this does not include COVID-19. So, on the face of it, the policy does not provide cover in the circumstances.

NFUM has though agreed, on other claims relating to this policy wording, to provide cover under this area of the policy. This is as a result of taking into account all of the policy documents provided to customers at the time of renewal, and whether they could be interpreted to cover infectious disease more widely.

Such cover would be limited to £10,000 per interruption. And it is likely such an interruption would occur each time government-imposed restrictions were introduced that interrupted C’s Holiday Accommodation business. This could apply to each time a national lockdown was introduced, but there may be other times when relevant restrictions also caused an interruption.

The key question here however is whether or not C’s business was actually Holiday Accommodation. NFUM has said that it was not, and that C’s business was more akin to providing a second site for a language school.

The term Holiday Accommodation is defined within the policy though, which says this is:

“Accommodation for paying guests.”

There is some disagreement between C and NFUM over whether C’s business was solely provided to a single third party. However, even if this is the case, I still need to think about whether individuals from this third party who were paying C to stay at its premises meet the definition above.

Ultimately, in order to decline the claim on this basis, "accommodation for paying guests" would have to be interpreted not to include "accommodation for paying guests who are all from a single school". And whilst it may not have been NFUM's intention that this activity was included, looking at the wording objectively, I am not persuaded that this is how a reasonable person with the relevant background knowledge would interpret this term.

I note that the NFUM has, internally, said that the “purpose [of the third party staying] is not for holiday but educational”. But the relevant definition is limited to

accommodation, and I don't think the title of this definition is determinative of its meaning.

So, whilst I understand NFUM's concerns, I do not think the policy wording can be fairly and reasonably interpreted not to provide cover in the circumstances. And I currently think NFUM should reconsider C's claim, based on the service it was providing meeting the definition of Holiday Accommodation.

Claim handling

As I say, I do understand some of NFUM's concerns over what it considers to be the business activity of C. Additionally, the changes to C's management and ownership around this time added an additional layer of complexity. And I appreciate that it would have taken some time to investigate and consider the particular circumstances of this claim.

However, I am unable to conclude that it was reasonable that this should take over a year. Both parties have provided a timeline of events, and these largely correlate. So, I have not gone into detail on these within this decision. There were times when NFUM was waiting for C to provide information, and I also consider that most of the information requested was reasonably necessary. However, the delays from NFUM's side make up the majority of the time taken. Taking a very holistic approach, I consider NFUM doubled the time it should have taken to provide an answer to C on the claim.

C has raised concerns about the involvement of other parties in the claim process. Insurers often involve other parties to investigate and consider claims on their behalf, and this forms part of standard industry practice. So, I do not consider NFUM acted inappropriately in this regard. However, it should have been clear about who these parties were and what their role was. I am not persuaded that NFUM communicated effectively on this, and this added avoidable confusion and potentially delays.

C has also raised concerns about the manner of some communication, including in phone calls. Unfortunately, NFUM has not been able to provide recordings of these calls. However, I also need to bear in mind that C is a limited company. Whilst its director may have been upset by the content and/or tone of these conversations, I can only take into account the impact on C as a limited company – and such an entity cannot suffer distress.

Similarly, whilst it appears C was at one point led to believe its claim would be met – and so the director suffered understandable distress on learning this was not the case – it is only the impact on C that I am able to consider. I haven't seen anything that suggests C itself was caused a detriment by any miscommunication here.

NFUM has already offered (and potentially paid) C £450 compensation for issues with handling the claim. As the claim was ultimately declined, this is within the region of what I would think is fair and reasonable.

However, as I am inclined to direct NFUM to reconsider the claim, if this ultimately leads to the claim being met, C will have been without the settlement of this claim for an extended period. As such, I consider that, in addition to the £450 compensation, NFUM should add interest to any settlement it pays C at a rate of 8% simple per annum, from 1 October 2022 (which is when I think it would have been reasonable for a claim decision to have been made in the circumstances) to the date of eventual settlement.

The policy migration

I appreciate that C is unhappy that its cover was moved from the policy it had been on for some time, to a different policy. C considers that the new policy provided a

number of benefits that it does not require, and so did not feel it should have to pay a higher premium when it was not benefitting from this. C is also unhappy that the Home and Lifestyle policy it previously had is still available, and says it was led to believe this was not the case.

The Home and Lifestyle policy is intended for customers who are largely concerned with insuring their own home, but who also carry out some business activity from that home. Having visited C's premises in 2022, NFUM determined that this was not suitable for the type of business being operated. NFUM decided that the risk posed by C's activities was more suited to a commercial insurance policy.

I appreciate C may argue that it is still operating as a residential property (with C's director living at the premises) that provides some business activity. However, as the Investigator has set out, largely speaking, it is for an insurer to consider the risks posed by a customer and to choose which policies to offer that customer. Given my understanding of C's arrangements, I do not consider NFUM's use of its commercial discretion in the circumstances to have been inappropriate. It is entitled to decide that it is not willing to offer (or continue to offer) a particular product to a customer if it chooses, as long as this is not, for example, based on discrimination (and there is no suggestion here that this is the case).

C considers that the commercial policy is not appropriate, as it provided cover for elements that C did not require. But it is open to a customer to choose not to continue with a policy that it considers unsuitable for it. From NFUM's notes, it seems C initially decided not to cancel the policy due to the stress and admin of finding a replacement. I understand that C has since moved its cover away from NFUM though.

I note what C has said about being potentially misled into thinking the Home and Lifestyle policy was no longer available. It may be that this was the result of confusion between this policy no longer being available to C, not available to commercial customers (due to changes in rules around insurance pricing), or not being available at all. However, even if NFUM was not as clear as it ought to have been here, I need to consider whether this had any impact on C as a limited company. Regardless of whether the policy was available to other customers, it was not available to C though – so I don't think clearer information here would have changed anything material."

I asked both parties to respond if they had any further comments or evidence they wanted me to consider. NFUM confirmed that it accepted the findings in the provisional decision and made no further comment.

C made a number of comments. I have tried to summarise those I consider to be key as follows.

C said that the policy provided cover for cancelled advanced bookings and that the UK Government had imposed restrictions on the UK which meant the guests would have needed to cancel their visits. So, C simply acknowledged this inevitability and cancelled the bookings itself.

C considers that NFUM is responsible for all of the delays, and that the interest payment should be calculated from June 2022 rather than October 2022. C also said that after it had provided certain information to NFUM in support of the claim, it was told that NFUM had all the information it needed to process the claim – but that a number of months later C was contacted to provide even more information. C is unhappy with the communication provided by NFUM throughout the claim.

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 have come to the same outcome as in my provisional decision, largely for the same reasons.

The majority of my findings in my provisional decision have not been disputed by the parties. So, having reconsidered the available evidence, I see no reason to change my outcome on these points.

C has raised comments around the COAB cover. But whilst I note C's comments that advanced bookings would have needed to have been cancelled by guests, this is not certain. A number of the bookings look to have been scheduled at times outside of the more rigorous restrictions introduced by the UK Government in response to the pandemic. More importantly however, the policy only provides cover in certain circumstances.

In order for there to be a successful claim, the bookings would need to have been cancelled by the guest, and for one of the particular insured reasons listed in the policy. The reasons potentially most relevant include:

“death, injury, illness... or compulsory quarantine of any guest or their close relative or partner, close business associate or partner”

However, no evidence has been provided that any of the guests (or relatives, etc.) actually suffered from or were subject to one of these circumstances. And certainly not that this was the cause of the cancellation.

So, even if I accept that a claim could still be paid where it was C acting to cancel the booking, rather than this being an action of the guest(s), it would still need to be shown that the reason behind this was one of those within the policy. And I am not persuaded that this is the case here. It follows that I consider the decline of C's claims under this area of cover to have been in line with the policy terms, and fair and reasonable in the circumstances of this claim.

That said, I do consider that the decline of the claim under the general Holiday Accommodation cover was not fair or reasonable. And that NFUM should reconsider this for the reasons set out in my provisional decision and above.

C has also referred to the claim handling and delays. I do consider NFUM ought to have processed the claim quicker than it should have and that it should have communicated better with C. However, NFUM has offered £450 compensation in relation to claim handling issues. And I remain of the view that calculating interest from 1 October 2022 is appropriate.

C has said that NFUM was responsible for the delays in this claim being processed. But whilst NFUM were responsible for some of these, it is also true that there were times when it was waiting for C to provide required information.

I should also say that the initial information requested was not actually provided until late July 2022 anyway, so using June 2022 as a start date for when the claim ought to have been met would not be reasonable.

Further information was then needed. I consider that, generally speaking, the information being requested was reasonable given the circumstances. And whilst I agree it would have been better had this been requested earlier, I have factored that into the redress.

It is also fair and reasonable that an appropriate length of time is factored in to have allowed NFUM to have assessed the required information once it was provided. Whilst, in the actual circumstances, this took longer than was appropriate, I do need to include provision for this.

Overall, I consider that 1 October 2022 is an appropriate date to use for saying when the claim ought to have been met. And I remain over the view that it is fair and reasonable that interest be calculated from this point on any settlement that is payable to C.

Putting things right

The National Farmers' Union Mutual Insurance Society Limited should put things right by:

- Reassessing C's claim on the basis that the business it was providing was Holiday Accommodation.
- If the reassessment of C's claim means that any settlement is due to C, NFUM should add interest to this settlement at a rate of 8% per annum from 1 October 2022 to the date of settlement.
- Paying C £450 compensation if it has not already done so.

My final decision

My final decision is that I uphold this complaint. The National Farmers' Union Mutual Insurance Society Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 31 May 2024.

Sam Thomas
Ombudsman