

## The complaint

Mr W is unhappy with what The National Farmers' Union Mutual Insurance Society Limited (NFU) did following claims he made on his legal expenses insurance policy.

## What happened

In January 2020 Mr W contacted NFU to make a legal expense claim. He believed a storage company had damaged items he held with it. And he asked if he could use his own solicitors (C) to pursue the claim. Following confirmation from C that the claim had reasonable prospects of success, NFU confirmed their appointment in February. Matters progressed. In November C requested authorisation to issue the claim, which NFU agreed. The same month Mr W sought assistance with a separate (though linked) claim against an insurer relating to damage to his property. NFU agreed C could also deal with this and authorised a court issue fee in December 2020.

In March 2021 Mr W contacted NFU as he was concerned about the handling of his claims by C and asked if he could use one of its panel firms. NFU had difficulties in finding a panel firm who could assist but instructed H in April 2021 in relation to both claims. H advised in May that it appeared the claim against the insurer had been issued incorrectly and it was agreed counsel's advice would be sought. Later that month H said it was no longer prepared to act for Mr W as relations between them had broken down.

NFU said its other panel firms were conflicted but the barrister H was intending to use would take instructions direct from Mr W. It thought that was the best way forward given upcoming court deadlines. Mr W didn't want to do that and NFU sought to agree terms with an alternative firm he found. However, although NFU agreed an increase in the amount it would pay that wasn't possible. It did agree terms with another firm Mr W found in June (B) who pursued the storage claim (and sought advice on whether any action could be taken in relation to the insurer claim which appeared to have become statute barred).

In August NFU provided Mr W with details of the claimed costs from the firms who had dealt with the matter and said payment would be considered once the matter had concluded. It said the professional negligence claims Mr W was now seeking to bring against C and H wouldn't have a bearing on that. Matters were progressed by B with NFU authorising the costs for counsel's assessments. Following a review of counsel's opinion in October 2022 NFU said it was concerned the indemnity limit (of £50,000) for Mr W's claims had been exceeded taking into account the amounts it had paid to his former solicitors and the costs B had already incurred. It said it would be withdrawing cover for these but agreed to provide some limited further funding for the storage claim to try and achieve a settlement. I understand Mr W accepted a sum of £25,000 in September 2023. In his views on the complaint our investigator said, in summary:

- NFU had taken reasonable steps in relation to the concerns Mr W raised about the actions of C and H (and counsel). And he didn't think it was unreasonable of NFU to suggest Mr W consider delaying a transfer to a panel solicitor until after a court deadline had been met.

- There wasn't an obligation on NFU to find an alternative firm for Mr W after H said it would no longer act for him. And it had agreed to provide funding for Mr W to instruct the barrister H had found on a direct access basis which he thought was reasonable.
- NFU couldn't have refused to pay the costs claimed by C and H on the basis of the unproven allegations of negligence or breaches of NFU's 'Working Together' agreement. He didn't agree that an email Mr W had been sent on 22 June 2021 could reasonably be said to have reset his indemnity limit to £50,000.
- In paying costs to C and H at the point it did NFU did appear to be in breach of the 'Working Together' agreement because that said costs would only be paid at the conclusion of the case and adverse costs would be prioritised.
- But as settlement of the storage claim had now been agreed Mr W hadn't incurred any adverse costs. And he didn't think it likely in any case Mr W would have been advised to pursue his claim at that point given B's costs already amounted to around £45,000.
- He said an issue about how the settlement Mr W had accepted should be apportioned (and what, if any, element of this should be allocated against costs) was an issue that had only arisen more recently. So that would need to be considered as part of a separate complaint (which he was happy to set up if Mr W wanted him to do so).

Mr W didn't agree. He's provided detailed submissions throughout the course of this complaint but, while I've looked at all of the comments he made, here I've summarised those he primarily provided in a document titled 'Submissions for the Ombudsman' which he sent following our investigator's most recent view.

- NFU said in response to his complaint that the 'Working Together' document wasn't one he could rely on because it was between NFU and his instructed solicitors and was non contractual. But in recent correspondence with him it had referred to the agreement as binding him in compliance with his policy. And NFU had previously told him that no costs would be paid until conclusion of the claim.
- However, it hadn't acted in accordance with that agreement because it had failed to notify him of what indemnity he had remaining under his policy. It had paid solicitors prior to the end of the action and it hadn't taken into account the requirement to pay third party costs before those of his instructed solicitor.
- He said NFU failed to take proper action when he complained about the actions of C and had paid them with the professional negligence claims he made still outstanding. And it had left him unrepresented when H said it would no longer act for him. He thought it was in response to those failings that NFU agreed to reinstate his indemnity limit in its email of 22 June 2021. He didn't find out that there was in fact no indemnity left until the end of 2022 when as an unwell pensioner on a limited income he wasn't able to progress the legal action on his own.
- Mr W also made clear that he thought the issues which had arisen more recently in relation to the apportionment of his settlement were all linked to matters forming part of this complaint. So they were ones we should consider as part of it.

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.

It's very clear from the correspondence I've seen what a difficult and stressful experience this has been for Mr W. He's also told us about some serious health issues that have and continue to affect him which I was extremely sorry to learn about. I hope the planned medical procedures he's told us about will help to make things better for him in future.

I also appreciate that, as a result of his health issues, Mr W requested more time in order to make submissions prior to a decision being reached on his complaint. In relation to the service we provided those matters have been considered as part of our separate process for dealing with such issues. But I've nevertheless thought about whether it's fair for me to reach a decision on his complaint.

In doing so I've taken into account that Mr W has had the opportunity to provide his comments in response to the three views our investigator reached and again prior to the complaint being moved for an Ombudsman's decision. And he's done so in correspondence comprising over 200 separate documents (with a total page count in excess of 1,300). I'm satisfied Mr W has been given a fair opportunity to provide his representations and I have the information I need to reach a decision on his complaint.

However, in doing so I'm not able to consider the actions of the solicitors who acted for Mr W. I know our investigator has already explained this but for completeness that's because 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 did here. But, 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 any concerns Mr W has about their actions aren't something I can look into.

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. And the question I need to consider when considering Mr W's complaint is whether NFU did anything wrong when dealing with the claim he made. In line with our approach to every complaint I then need to consider what impact that had on Mr W and what, if anything, NFU needs to do to put things right.

It doesn't appear to be in dispute that the claims Mr W made were ones that his policy covered. I can also see that the cover offered by his policy includes *"All reasonable and necessary costs chargeable by the Representative and agreed by [claims handler] in accordance with the [claims handler's] Standard Terms of Appointment"*. And the policy says the terms of appointment are *"The terms and conditions (including the amount we will pay to a Representative that apply to the relevant type of claim, which could include a conditional fee agreement (no win, no fee))"*.

I'm also aware that in the case of *Brown-Quinn & Anor v Equity Syndicate Management Ltd & Anor* the judge concluded that reference in the policy terms to the Standard Terms of Appointment was *"sufficient to bring those terms to the notice of the insured and that they are therefore part of the contract made with the insureds in this case"*. So I think it is appropriate to take into account the requirements of the Standard Terms of Appointment (which in this case is the 'Working Together' document) when considering whether NFU has acted fairly and reasonably in the decisions it made about Mr W's claim.

### *NFU's response to Mr W's concerns about C and H*

I've considered first Mr W's concerns about what NFU did in response to his concerns about C and the subsequent issues he had with H. In thinking about that I'm mindful of the fact that where a firm has been appointed to progress a claim an insurer's role is normally limited to the funding of fees and disbursements and it doesn't control the day to day conduct of litigation. But where a policyholder raises concerns about their representative (whether appointed by the insurer or not) we do expect an insurer to take action even if that's limited to ensuring the representative is aware of the concerns and responds to them.

In this case Mr W first contacted NFU with a request to move to a panel firm at the start of March 2021. After that request was confirmed (Mr W initially withdrew his request) NFU sought to transfer the claim to a panel firm. It's unfortunate the firms it initially approached were unable to act but I don't think the resultant delays were ones that came about because of anything NFU got wrong. And an alternative panel firm was instructed by mid April.

I don't think that timeframe was unreasonable in the circumstances and I also think it was appropriate of NFU to check with Mr W whether he definitely wanted to transfer to a panel firm given he had an approaching court deadline. Any new firm would need to familiarise themselves with the case prior to taking action which could create delays and I think it was right NFU drew this to Mr W's attention. And on his confirmation that he did want to proceed it acted on that request. As by that stage it was clear Mr W no longer wanted to progress his claim with his existing representatives I don't think there was anything it needed to do beyond actioning his transfer request.

Mr W says when H subsequently said it would no longer act for him NFU didn't take appropriate action and left him unrepresented. I recognise this will have been a stressful time for Mr W but I don't think that's a fair characterisation of what happened. H advised NFU on 17 May that they were no longer prepared to act for Mr W because of a breakdown in relations (notes indicate this followed a complaint Mr W had made to H). I know Mr W doesn't feel there had been a relationship breakdown but if he feels H has acted unreasonably here that's an issue he'd need to raise with it.

NFU checked whether there were other panel firms that were able to act for Mr W but unfortunately that wasn't the case. I appreciate that left Mr W in a difficult position but I don't agree NFU left him unrepresented. It made clear the barrister H was proposing to instruct would take instructions directly from him (and that they would therefore be effectively taking on the role of solicitor and barrister and would be able to guide Mr W through the legal process). Mr W didn't want to progress that option but I think it was a reasonable way of ensuring he wasn't without representation.

### *The policy indemnity limit*

Mr W says NFU didn't keep him informed as to how much of his indemnity limit remained during the progress of his claim. In support of his view that it should have he's referenced a clause of the 'Working Together' document which says "*you must keep the Customer and us regularly updated on the progress of the Claim, including the costs position*". But that clause applies to the solicitors appointed to work on the claim so under the provisions of that agreement it's they who should have been keeping Mr W updated in relation to the costs and expenses incurred.

In any case I don't think Mr W is right to say that he only received information about costs and what remained of his indemnity limit in December 2022. For example, in May 2021 NFU provided information about the costs claimed by C in respect of their work on both of his claims. In August 2021 it provided details of the costs charged by H. And following that Mr W

asked NFU if these costs could be removed from his indemnity limit. The fact Mr W requested this suggests to me he was clearly aware of and mindful of this issue. And if he thinks his solicitors should then have provided him with further information about this then that's an issue he'll need to raise with them.

Mr W says he believes NFU reset his indemnity limit in the correspondence it sent in June 2021. I don't think the email he's referenced can reasonably be interpreted in that way. It does say "*The limit of indemnity for these matters is £50,000 on each claim*". But in my view that's simply a factual statement reflecting the indemnity limit the policy provides. I think to conclude it had reset Mr W's indemnity limits (meaning the reasonably significant costs already incurred wouldn't count against it) the email would need to have much more explicitly stated that and it doesn't.

Nor do I think Mr W interpreted the email in that way at the time. I say that because, as I've already referenced, in August 2021 he asked NFU if it would provide his current solicitors with full indemnity in respect of the claims he was making. So he was clearly aware at that point the indemnity limit hadn't been reset and NFU made clear in response that the previously incurred costs wouldn't be discounted from that limit.

#### *Payment of costs to C and H*

Mr W is unhappy NFU didn't agree to delay payment of the costs incurred by C and H until the outcome of his professional negligence claim was known. But I don't think it would have had grounds to do that. The 'Working Together' document does provide for costs and expenses to be assessed and says NFU reserves the right to refuse to pay or reclaim any amounts that are, for example, unreasonable, disproportionate or fall outside of the scope of the policy.

So, if the professional negligence claim was successful, then NFU might have been able to recover costs from the firms involved. But given that hadn't been established at the point the case concluded I don't think NFU could legitimately have withheld payment from those firms under the provisions of the 'Working Together' document. In fact doing so might have put Mr W in a worse position as it could have created a liability for him to pay those costs; the evidence I've seen suggests the retainers he agreed with C and H obliged him to pay any costs of theirs that weren't recovered from the other side or from NFU.

But while I don't think NFU could have withheld costs due at the conclusion of the claim I do appreciate that isn't when they were paid in this case. It's clear that NFU paid the assessed costs of C and H prior to that. And the 'Working Together' document says "*Where we are responsible for your Costs and Expenses these will be considered by [claims handler] on conclusion of the Claim and in no circumstances shall we make any interim payments*". That also reflects what Mr W was told by NFU during the course of his claim. However, that isn't what then happened. So I don't think NFU has acted in line with the provisions of the 'Working Together' document or the information it previously gave to Mr W.

NFU says it made payment so the firms involved would release their files to Mr W's current solicitors. I don't know if that was necessary but I don't think that's something I need to decide. That's because, even if it wasn't, I don't think that's caused a loss to Mr W. He was initially concerned making payment in this way meant he was potentially liable for adverse costs if he was unsuccessful in his claim. And the 'Working Together' document gives a priority order for costs and expenses to be paid in the event they exceed the maximum limit under the policy. 'Opponent's Costs and Expenses' come first on the priority list.

I appreciate there's been previous discussion as to whether making payment to C and H prior to the conclusion of the claim did put Mr W in a worse position. But I don't think that's

something I need to consider because subsequent to those discussions Mr W settled his claim. So there are no adverse costs in this case. As such the indemnity limit would only ever be used to provide for the costs and expenses of the solicitors acting for him.

Mr W has said he only settled his claim because there was no indemnity remaining to pursue it. And he says that's a result of NFU's non compliance with the 'Working Together' agreement. But I don't think that's supported by the other evidence. Even if NFU hadn't paid his former solicitors costs and expenses Mr W told us that his current solicitors were seeking around £45,000 for their costs. And the order of priority in the 'Working Together' agreement means that expenses (such as court fees) would be paid prior to the professional fees of his representatives.

I think it's likely that including the expenses incurred on this claim from his former solicitors plus the costs of his current solicitor would in themselves exceed the policy indemnity limit. So even if payment hadn't already been made by NFU I think it could reasonably have concluded there wasn't in any case further funding available under the policy. That means Mr W would always have been in the same overall funding position.

In addition the policy says "*if an insured person does not accept a reasonable offer to settle a claim, we may refuse to pay further costs and expenses*". A timeline provided by Mr W with his most recent submissions says in September 2023 his current solicitors told NFU they considered the settlement offer to be reasonable. As a result, regardless of any issue with the indemnity limit, I think NFU would have been entitled to withdraw funding if Mr W had sought to pursue a claim where his solicitors advised a reasonable offer of settlement had been made.

#### *Issues covered in NFU final response of 18 April 2024*

I recognise that Mr W has ongoing concerns about whether and how the settlement he achieved should be allocated against his legal costs. He says he only accepted that settlement because of the prior actions of NFU. I've already addressed that issue in this decision.

And the issue of how that settlement is then apportioned is clearly a new issue; it couldn't have arisen until after the settlement had been accepted which has only happened more recently. So it will need to be considered as part of a separate complaint which our investigator has already offered set up. If Mr W wants to progress that he'll need to get in touch with that investigator.

#### **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 W to accept or reject my decision before 27 June 2024.

James Park  
**Ombudsman**