

The complaint

Mr E complains that The National Farmers' Union Mutual Insurance Society Limited ("NFU") unfairly declined a claim for subsidence damage.

What happened

In 2020, Mr E took out a home insurance policy with NFU. He'd owned the property for some time and he'd had it underpinned, which he explained to NFU when it asked him whether or not the property had suffered from subsidence previously.

NFU offered cover without asking further questions about the underpinning or applying any additional terms for it. In 2022, Mr E made a claim for subsidence, when he put his property up for sale and some potential buyers noticed cracking.

NFU declined the claim, saying the damage was pre-inception and the foundations weren't sufficient in depth. Mr E was unhappy about this and made a complaint. In its response to the complaint, NFU offered Mr E £200 compensation for the delays in handling the claim and the lack of adequate communication. And in another final response it offered a further £250 for poor claim handling including Mr E having to chase for updates. But it maintained that its decision to decline the claim was correct.

Because Mr E didn't agree with NFU, he referred his complaint to this service. Our Investigator considered the issues, and thought Mr E's complaint should be upheld because NFU hadn't done enough to show that the foundations weren't adequate. Our Investigator also said that although there was pre-inception damage, NFU still needed to identify and cover any damage that was caused after commencement of the policy.

Mr E has now sold the property. He says it was sold at considerable undervalue due to the subsidence problems, but NFU said it wouldn't provide cover for a sale at undervalue unless there was evidence to support that this was purely as a result of the subsidence damage. It also said it wouldn't cover the loss if it exceeded the cost of the repairs.

Because an agreement couldn't be reached, the complaint has now come 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 decided to uphold this complaint. I'll explain why.

It's accepted by both parties that there's historic subsidence damage and that the property was previously underpinned. But if NFU rely on exclusions in the policy in order to decline the claim then it's for NFU to show that a valid exclusion applies and to evidence this. And I'm not persuaded it's done that.

I say this because the photographs Mr E has provided, which appear to be taken where the conservatory was constructed, show the foundations being laid – and from looking closely at

the photos, I think they do demonstrate that the foundations comprised concrete beams on top of 3.5m foundations. So I don't agree with NFU's claim that the foundations were only 500mm deep where the minimum requirement was 900mm. Mr E's explanation is also supported by the structural engineer's report provided, which describes concrete beams sitting on the foundations, as shown in the photos.

I therefore don't consider it fair for NFU to have refused to sink another trial hole in the location where Mr E felt this should've been done to determine the correct depth of the foundations. And I consider Mr E has lost out as a result.

In terms of the exclusion NFU has relied on which says pre-existing damage isn't covered, whilst I agree that this is excluded from the policy and there was pre-existing damage, I don't consider NFU has shown that all the damage was caused prior to inception of the policy and that there hasn't been damage since March 2020 when the policy was taken out. Mr E advised that the further damage wasn't noted until September 2020, so I think it's likely there is some damage which falls under the scope of Mr E's policy.

The policy excludes cover for loss in value if the loss exceeds the cost of repairing the property. So I won't be able to hold NFU liable to compensate Mr E for the total loss in value of his property. However, I agree with our Investigator and I will require NFU to cash settle for any damage it can identify which was caused after inception of the policy. If it cannot conduct further site investigations, as the property has now been sold, it must provide a fair and reasonable offer based on the investigations it carried out previously – and it must provide adequate reasoning for the offer it makes, showing evidence to support the offer for the post-inception damage it has identified as being covered.

If there are further disagreements between the parties about the offer NFU makes to settle the claim, these must be dealt with under a new complaint. Any future complaints can be referred to this service subject to the usual time limits and other rules which apply.

NFU has addressed where it could've provided a better service to Mr E. But I don't think it's gone far enough to compensate him for the distress and inconvenience he experienced. I can see that Mr E had to continually chase for progress to be made with the claim whilst he was trying to sell his property.

The delays of around nine months were excessive as this is a considerable amount of time to arrange site investigations – and I don't consider the £200 NFU offered for those delays to be adequate. This is because it was an already stressful time for Mr E with the sale of his home, and the added worry about his claim meant he was impacted significantly, as he went to considerable effort to sort things out over a period of several months. So I'm requiring NFU to increase the compensation for those delays to £400, bringing the total amount of compensation in this case to £650.

Putting things right

The National Farmers' Union Mutual Insurance Society Limited must now:

- Pay Mr E a cash settlement for the repair costs of any subsidence damage identified to be caused since the policy was taken out, subject to the remaining terms and conditions of Mr E's policy.
- Increase the compensation for distress and inconvenience to £650. From this, NFU may deduct any amounts already paid to Mr E.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 September 2024.

Ifrah Malik
Ombudsman