

## **The complaint**

Miss P complains about how The National Farmers' Union Mutual Insurance Society Limited ("NFU") dealt with a claim she made on her motor insurance policy after she was involved in an accident.

## **What happened**

Miss P has a comprehensive car insurance policy with NFU. The policy started on 2 March 2023.

Miss P says she purchased a new electric car in March 2023 and since owning it she's had nothing but problems with the car. Miss P says the car was inspected; she was told there was a fault but it wasn't known what it was.

In July 2023 Miss P was having work done to her driveway so needed to move her car off the drive and park it on the road. Miss P did this and got out to check the vehicle, she says she wanted to reverse it one metre so she got back into the car. Miss P started the car with the button to turn the power on and then turned the selector to reverse. As soon as she selected reverse the car shot backwards – without her even pressing the accelerator.

As a result Miss P's vehicle hit the car parked behind her. So Miss P made a claim on her policy. NFU say because Miss P's car hit a stationary vehicle behind her it would be recorded as a fault claim. Miss P told NFU about the issues she'd had with the car, and the circumstances of the incident, but NFU wouldn't recover its costs so her no claims discount (NCD) would be reduced.

Miss P contacted NFU again and it instructed a crash investigator to inspect the vehicle. The investigator had some concerns about the car. Subsequently Miss P found further faults with the vehicle so NFU sent out its investigator for a second time. The investigator noted the additional faults reported by Miss P.

Miss P's car was repaired and returned in September 2023. NFU didn't reinstate Miss P's NCD since it was unable to recover its costs. Miss P says NFU aren't willing to take legal proceedings against the car manufacturer in order to recover its costs. NFU says it doesn't think it will be able to prove the accident was as a result of faults with the car. Miss P wants NFU to reinstate her no claims and remove the 'fault' marker from her records since her premiums have increased and will have an impact on future policies. Because she wasn't happy she complained.

NFU says it didn't recover its costs and so the claim is recorded as a 'fault' claim regardless of whether the driver is actually 'at fault' for the accident – it isn't intended to apportion blame. It explained the onus would be on NFU to prove negligence against the car manufacturer – and NFU weren't confident it would be able to prove the accident was the fault of the vehicle.

So it wasn't willing to begin costly legal proceedings. NFU say since Miss P's NCD was not protected it was impacted by the claim and, since it was unable to recover its costs, would remain recorded as a fault claim.

Miss P wasn't satisfied with the response from NFU so she referred her complaint to this service. NFU made an offer to resolve Miss P's complaint – the claim was closed as non-fault and the excess of £250 was reimbursed, it also offered £250 for the distress and inconvenience caused. Miss P declined the offer and so one of our investigators looked into her concerns.

The investigator said the offer from NFU was fair; it acted within the terms of the policy but given the circumstances of the matter it agreed to record the claim as non-fault and would reimburse the excess. So he didn't think NFU needed to take any further action.

Miss P didn't agree; she said the terms of the policy were clear and so NFU should issue proceedings to recover its outlay. Because Miss P didn't agree the complaint has 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'm not upholding it. I know Miss P will be disappointed with my response so I'll explain why.

#### ***Excess and NCD***

In a situation like that described by Miss P, when she's suffered damage to her car and a third-party vehicle, she is required to pay her excess to her insurer. The insurer pays for the repairs – and, in this case, the total loss of the third-party vehicle. If a third-party is involved the insurer can seek to recover the money from them. And if it successfully recovers its money, the insurer can refund the excess to the policyholder, if the terms and conditions allow. But because NFU were unable to recover its money Miss P wouldn't receive her excess back.

The policy says, "*Claims for the following will not affect your entitlement to no claims discount: any claim where we are able to recover the full costs of that claim.*" And since NFU weren't able to recover their costs, it reduced the NCD. I know Miss P feels strongly about this since she wasn't to blame for the accident. But the only way the claim wouldn't affect her NCD would be if NFU had recovered its money in full, and this hasn't happened here. So the NCD was reduced correctly and in line with the terms of the policy.

#### ***Recording of fault claim***

I can see this incident and its consequences have had a significant impact on Miss P. I've no doubt she's done all she can to try and prove her claim and acted in good faith when reporting the matter to her insurer. I can understand why she thought her testimony, the circumstances of the incident, and the expert reports would be enough to prove the faults on the car were the cause of the accident. And when NFU failed to instigate proceedings against the car manufacturer and recorded the matter as a fault claim; this would have both shocked and upset her.

Miss P made a claim on her insurance policy for the damage to her car. This has led to an increase in the cost of her insurance since claims history is a factor when an insurer

calculates its premium. Miss P made a claim on her policy, the cost of which couldn't be recovered by her insurer. As such the claim is recorded as a fault claim and often affects the price of subsequent insurance; this is used by insurers on a central database to recognise whether costs were recoverable or not under a claim. So while I understand Miss P is upset by this, it is standard practice by insurers and I don't think NFU has done anything wrong here.

### *Recovery of costs*

In the terms and conditions of the policy, NFU is entitled to;

- a) *Receive all necessary information and assistance from you or anyone else insured under this policy;*
- b) *Take over and conduct the defence or settlement of any claim. We will do this in your name, or in the name of anyone else who is insured by the policy;*
- c) *Take proceedings to recover any amount we have paid or are due to pay under the policy. We will do this for our benefit and at our expense."*

And that is what it has done here. Because of this NFU doesn't need Miss P's agreement or approval to deal with the claim.

NFU explained that Miss P drove into the other vehicle, which was stationary at the time of the incident, and parked behind Miss P's car. NFU says based on that it is unlikely to recover its costs in the absence of specific evidence to the contrary. The reports confirm the presence of faults with the car, but that's not in dispute. I've considered the reports, they aren't consistent in the finding of faults, and there isn't anything that explicitly says the accident was as a direct result of a specific fault with the car.

I've considered the evidence provided to me. I empathise with the position Miss P now finds herself in. Unfortunately, I don't think that's due to NFU and its handling of the claim. NFU took steps to investigate what happened and that's what I would expect it to do.

Miss P says the only reason NFU have given for not committing to recovery of its outlay is because it doesn't think recovery was commercially viable. Miss P says NFU has breached the terms of its own policy since the policy states "*we will do this for OUR benefit and at OUR expense.*"

NFU explained that if the manufacturer made any admissions in Miss P's legal proceedings against them then it would help prospects of success in any action NFU may take against the manufacturer. But, in the absence of that NFU didn't consider it had real prospects of success and, given the costs involved, made a commercial decision not to proceed. I don't think NFU acted unreasonably here because it relied on the evidence before it to come to that conclusion.

The terms of the policy allow NFU to do this – it can issue proceedings to recover any amount paid, but the terms are clear that NFU will do this for its own benefit and at its own expense. There is nothing within the terms that compels NFU to take legal action and any decision it makes to do so, or not to do so, is for NFU to decide.

### **My findings**

I've considered the comments made by Miss P after our investigator issued his view. And I can see why she feels the way she does. She has complied with her legal requirement to have an insurance policy in place, and provided clear and compelling testimony about the incident and what happened. So I can understand why she thought her insurer would protect

her interests. But, as explained, NFU has acted within the terms of the policy and so I can't say it's done anything wrong in its handling of the claim.

As a gesture of goodwill NFU have recorded the claim as non-fault and reimbursed her excess. So it has effectively put her in the position she would have been in had NFU managed to recover its outlay. And I think that's fair.

NFU has already made an offer to pay Miss P £250 to settle the complaint. Miss P should contact NFU if she now wishes to accept this.

### **My final decision**

I don't think The National Farmers' Union Mutual Insurance Society Limited needs to do anything to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 11 November 2024.

Kiran Clair  
**Ombudsman**