

## The complaint

A limited company, that I will call S, has complained about the rejection of a claim made under the legal expenses section of its business insurance policy with The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual ("NFU"). Mr F, as one of the directors of S, has brought the complaint on its behalf.

NFU is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As NFU has accepted it is accountable for the actions of the agent, in my decision, any reference to NFU includes the actions of the agents.

## What happened

S says it had a contract for services with another business entity, which I will call T. In late 2022, T went into administration. The administrators brought a claim against S disputing the contract between S and T. They said S had received several payments from T in breach of the Insolvency Act 1986.

S disputes this and says that all payments it received from T were in payment for consultancy services provided to T. In October 2023, S made a claim under the policy with NFU for cover for the legal expenses in defending the claim brought against it.

NFU initially said the claim would be covered under the section of the policy that provides cover for legal expenses in relation to contract disputes. It asked for some further information in order to proceed with the claim. However, after further consideration, NFU said there was no cover.

NFU says the payments T made to S were in relation to a share purchase loan and the policy excludes cover for any claim relating to "*a loan, mortgage, pension, investment or borrowing.*" NFU also says the legal dispute S is involved in is pursuant to the Insolvency Act and involves an allegation that essentially one creditor (S) was favoured over others, as a result of T's relationship with S. While it is alleged the monies paid to S were for services (and therefore as part of a contract between S and T) the dispute is about recovery of that money as it was a breach of insolvency rules. NFU also therefore said there is no cover under the contract section of cover, as the legal dispute between S and the administrators is not as a result of a contract between them.

NFU accepts that S was mistakenly told initially there would be cover for the claim. It paid S £50 compensation for this.

Mr F complained about the refusal of the claim but NFU did not change its position, so he referred the complaint to us. Mr F has made a number of points in support of S's position. I have considered everything he has said but have summarised his main points below:

- There has never been a share agreement or loan between S And T. It had a contract for services, a copy of which has been provided.

- There is also a legal claim being brought against him personally, which might be relevant to the loan but it does not relate to S.
- The core of the claim from the administrator is a contractual dispute.
- If the claim is not being made based on a contractual dispute (to the effect that services either were not provided or were not as described in a contract) it is very difficult to grasp what it is based on, as the only relationship between S and T was a contract for services.

Mr F also says he has spent considerable time in communication with NFU and its agents dealing with this matter. S wants the claim met.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that NFU was entitled to reject the claim on the basis it did.

S does not accept the Investigator's assessment. It says that following T going into administration, a legal case was bought against S by a third party that "*at its core point, disputes that a contract existed between*" T and S. The contract for services between T and S has been proven to exist. S's insurance policy with NFU clearly covers contractual disputes and this is a contractual dispute regarding the provision of services, which is covered under the policy. S says there are no relevant exclusions, as no borrowing or investment have taken place as pertains to the contract being disputed.

S says the Investigator has conflated other information provided by the party bringing the case with the core matter in dispute, which is a dispute that there was a contract for the provision of services.

As the Investigator was unable to resolve the complaint, it has been passed to me.

### **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.

S's policy with NFU provides cover for various legal disputes that might arise in the course of its business. This includes contract disputes. I have set out the sections of the policy that both parties consider relevant to this claim below:

"WE will pay:

1) a REPRESENTATIVE, on YOUR behalf, COSTS AND EXPENSES incurred following an insured incident"

*"Contract disputes*

*Costs and expenses relating to a contractual dispute arising from an agreement or an alleged agreement which has been entered into by you or on your behalf for the purchase, hire, sale or provision of goods, services or the lease, licence or tenancy of land or buildings".*

However, the policy also states there is no cover for any claim relating to '*a loan, mortgage, pension, investment or borrowing*'"

S says there was no loan or share purchase agreement between S and any other party that is relevant to this claim.

The administrators are seeking that the payments T made to S during a specified period be set aside and S be required to repay them, so as to restore T's financial position to what it would have been had T not made them.

I can see in the letter of claim from the administrator that it refers to a "*purported loan*" T entered into with another entity and that this was a "*balance sheet construct designed to create the illusion of solvency when in truth the company [T] was balance sheet insolvent*" at the time the payments for alleged services were made to S. The administrators also allege the payments for services made by T to S were not for services and were a guise in effect to favour S over other creditors.

S wants cover for the legal claim brought against it by T's administrators. There is no evidence of any contract between S and the administrators and, even if there were, the dispute is not about any alleged contract between them.

Whether there was a valid contract for services and the payments made by T to S were made pursuant to that contract, is part of the evidence that would have to be tested in the legal case being brought against S (as it is disputed evidence) but it does not in my opinion render the dispute between the administrator and S a contractual dispute for the purposes of this policy. It is a claim brought under the Insolvency Act and as such I am satisfied there is no cover under the contract section of the policy with NFU and have not seen any evidence that it would fall within any other section of cover.

NFU accepted it had caused some frustration in initially telling S the claim would be covered. This was rectified quickly. I consider the £50 compensation already paid for this to be reasonable.

Having considered everything carefully, I do not consider NFU has acted unfairly or unreasonably and do not intend to make any award.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 4 October 2024.

Harriet McCarthy  
**Ombudsman**