

## **The complaint**

Mr and Mrs P's complaint is about the rejection of a claim made under their legal expenses cover with The National Farmers' Union Mutual Insurance Society Limited ("NFU").

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**

Mr and Mrs P hold home legal expenses cover and also business legal expense cover with NFU. The legal expenses cover provides for a limit of indemnity of £50,000 for each claim.

Mr and Mrs P's property, and those neighbouring them, are not on a mains drainage system and so each property has its own drainage arrangements. Mr and Mrs P have been involved in a long-running dispute arising from the drainage from a neighbouring property, which has caused frequent and repeated flooding of Mr and Mrs P's land.

Mr and Mrs P made their first claim relating to this in some years ago about their neighbour's use of a septic tank and NFU confirmed cover. Mr and Mrs P raised a second claim in or around 2015/2016 for a legal claim in respect of another issue with the drainage. NFU did not agree it was a separate claim and so Mr and Mrs P brought a complaint to us. One of my colleagues issued a finding that they should be treated as two separate claims with two indemnity limits. Both matters were however dealt with by the solicitors together and the 'pot' was joined. Related action has been ongoing since. Alongside this, there were other issues that arose.

NFU set up another claim regarding nuisance and water supply to part of Mr and Mrs P's land. NFU says it paid for costs and a surveyor's report to try and rectify a title issue. The costs of this was around £3,000 and as no live issue there has been no further action. And in error set up a separate claim in relation to a problem with the neighbour's septic tank under which it paid for some rectification work and costs of just over £13,000. NFU says this was related to the two main claims and should not have

NFU said the limits of indemnity for the two main claims had been used up fully and in fact it has also spent a further £26,000 over the limit (being the £13,000 referred to above and an additional £12,000). NFU therefore said it could not fund any further legal costs.

Mr and Mrs P are very unhappy with this. They do not accept that the £100,000 indemnity has been used up and they say they in fact should have four indemnity limits of £50,000 each to continue their claims.

In 2023, Mr and Mrs P also made a further claim for cover for a legal claim against their local authority for giving permission for their neighbours to discharge their surface water in such a way that it floods their land. Mr and Mrs P say this is a separate matter for which they want separate indemnity limit.

NFU considered the claim and said it was a continuation of the previous claims, as it all related to the same originating cause which is the drainage from their neighbour's property. As the indemnity for this has already been used, NFU said there was no cover for any further action. NFU said it has had the costs assessed and was satisfied that the costs exceeded the two limits. It also said it was for the solicitors to keep Mr and Mrs P aware of the costs position.

Mr and Mrs P are very unhappy with this and raised a complaint. Mr and Mrs P have made a number of points in support of their complaint. I have considered everything they have said but have summarised the main points below:

- They have not been provided with any explanation as to how the indemnity limits have been exhausted. They believe the indemnities have been "*mismanaged, misunderstood or wrongly attributed*" and need to know how they have been used.
- NFU said the solicitors were responsible for keeping them up to date with the costs and funding left but also that they should have monitored the costs situation, which is contradictory.
- They thought NFU would have some control over the panel solicitors and regulate the costs.
- Nothing in the policy says that it is for them as policyholders to monitor the legal costs. The solicitors were appointed by NFU. They had no input in the arrangements between NFU and the solicitors and were not in a position to know what was being charged. If they had done, they would not have allowed the funding to be exhausted.
- NFU has refused to give them a copy of their costs draftsman's report.
- There was a claw back of around £15,000 in respect of one of the claims, which has not been accounted for.
- The panel solicitors claimed significant costs for reviewing documents they kept being asked to resend, as each lawyer appointed to their case left. And the solicitors had to pay £10,000 to the other side, due to an error on their part, these things should not be set against their indemnity limit.
- They have also charged for two fee earners to attend conferences and mediation, which is unnecessary.
- NFU said it had given an additional £12,000 indemnity as a goodwill gesture but this is untrue, the £12,000 was awarded to them for a data breach because NFU had sent their paperwork to the neighbour's legal representatives. It had nothing to do with loyal membership and their predicament.
- The panel solicitors have since withdrawn from NFU's panel, but NFU did not tell them this. This means they are now left without any safety umbrella of NFU overseeing the solicitors.
- In any event there have been four claims (plus the most recent one) and there should therefore be four indemnity limits of £50,000 each available to them.
- The most recent claim is in relation to the discharged of surface water, which is a different issue from the sewage issues previously dealt with. NFU does not understand the new claim they are trying to make and has referred to 'surface' water as 'service' water.
- They have personal home insurance and separate business insurance policy and both include legal expenses cover, but when they asked about cover under the business policy they were incorrectly told they didn't have business cover. This added considerably to their stress.
- They are now left unrepresented and abandoned when they have to conclude this matter. They have suffered immeasurably throughout this matter. Mr P is very unwell and they have had to spend considerable time and energy on this matter and complaint.

- NFU said it would pay £1,000 for a fence.
- They have obtained copies of internal emails between parties at NFU and those instructed by them, which are overly familiar and unprofessional. This is disrespectful, shows a lack of integrity and that NFU does not take their matter seriously

NFU did not change its position. It said the costs had been assessed and it had indemnified Mr and Mrs P for them, as required under the policy. And with regard to the new claim Mr and Mrs P want to make, NFU said it is still linked to the claim for which indemnity has already been exceeded, so it cannot provide further cover.

As Mr and Mrs P remained unhappy with NFU's response, they referred the complaint to us.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld. He said that NFU had the solicitors' costs assessed by an expert law costs draftsman and was entitled to rely on their assessment that the costs were fair and reasonable. While Mr and Mrs P had concerns about certain costs charged, they would need to provide expert evidence to support that. And any complaint about the solicitors themselves, including the charges made, would have to be directed to the Legal Ombudsman Service.

The Investigator did not think that the refusal of the new claim was unfair as it did relate to the previous claims and there was no convincing expert evidence that it would be considered entirely unrelated. He therefore was satisfied that NFU was not acting unfairly in its refusal to meet any further legal cost.

Mr and Mrs P do not accept the Investigator's assessment. They have made a number of points in response and again while I have considered everything they have said, I have summarised the main points below:

- The Investigator has not understood the situation and did not ask them any questions or for any further information before issuing his assessment, which is flawed. They want me to be aware of the bad service received and the unnecessary distress this has caused them.
- The Investigator has said they need an expert to look at the accounts but NFU has clearly confirmed that it did not keep any financial records.
- NFU libelled them by saying they misrepresented dates of the surface water issue and this has not been addressed.
- NFU met the costs of damage to their property under the home insurance sections of cover, as a result of the most recent flood of surface water and is now pursuing a subrogated claim against the neighbour for recovery of that outlay, with which they are having to cooperate. So, NFU refused cover for them but is pursuing its own interests to recover the money it paid out to them. NFU must therefore think there is a case to answer by the neighbours and local authority that allowed them to discharged their surface water this way.

As the Investigator has not been able 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.

Having considered everything provided to us, I can see this has been a long and difficult

saga for Mr and Mrs P and their home has been affected for many years. However, despite my sympathy for their position, I do not consider that NFU has acted unfairly or unreasonably in refusing to provide any further cover under the policy. I will explain why.

How many claim indemnity limits should there be?

Mr and Mrs P's policy provides for indemnity of reasonable legal costs in relation to a number of specified areas of possible dispute, including property protection. They have cover under both their personal home insurance policy and the business policy. I can see they were given some misinformation about the business cover and I can understand this would have been frustrating. However, they would not be able to claim under both sides of the policy for the same event, so I don't think this misinformation led to any detriment. While I appreciate it would have been frustrating, as they knew they had business cover, NFU did later confirm the business cover and I do not think that it warrants any award.

The policy is subject to a number of terms and conditions. The most relevant to this complaint says:

*"the most WE will pay for all claims resulting from one or more event arising at the same time or from the same originating cause is £50,000".*

Mr and Mrs P's first claim was in relation to the use of an old sewage system. So a limit of £50,000 was allocated to that. There was another claim which one of my colleagues decided should have an additional £50,000 limit. NFU did not agree with this but has honoured that.

Another claim file was set up for defending a nuisance claim brought against Mr and Mrs P by the local authority. This was withdrawn and the costs were paid by the local authority. Again, I do not think that this means there is another pot to be used by Mr and Mrs P for any other related parts of the claim. In addition, a claim was set up to get a surveyor's report and with a view to addressing an issue with title deeds, which incurred costs of around £3,500. I don't think this means that any remaining pot for this matter is left available to be used.

NFU also says it set up another claim file in relation to an old sewage tank issue, which was mistakenly was given its own limit. NFU says it paid for rectification work and legal costs of around £13,000 under this claim reference and this was part of the overspend of the total of £100,000 it had agreed on previously. NFU therefore says that Mr and Mrs P have benefited from this error but it does not mean that there is another £50,000 is available.

NFU effectively says they were all elated, so should have come under the main claims and the £100,000 indemnity limit. Even if this is not correct, I agree with NFU that the fact other claim files were set up with their own indemnity limits does not mean these pots are now available to continue the main claim. I say this because, even if these matters were correctly set up with their own £50,000 limits, on the basis they were entirely separate issues (which I do not make any finding on) each of these issues has been resolved as far as I can see. So, if they were separate issues (with different originating causes) any remaining indemnity in the pot allocated to these claims cannot be used for other claims with a different originating cause.

In short, if they are all related to the same originating cause (as NFU says) the indemnity limit has been used up and if they were all separate they have been dealt with within their indemnity limits.

Given this, I do not agree that there are four indemnity limits available to Mr and Mrs P to continue their action. I am therefore satisfied that the limit available for the ongoing claims was £100,000.

NFU says this limit has been exceeded. It has had the costs assessed and has agreed to pay around £126,000.

While we expect legal expenses insurers to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question, it has no right to interfere or dictate how they conduct the actual legal case. NFU is not responsible for any action or omission on the solicitor's part. This is the case whether the solicitor is on the insurer's panel of preferred solicitors or not. Solicitors are independent professionals, subject to their own regulation. Any complaint about the service provided by the legal professionals involved in this case should be directed to the relevant body - the Legal Ombudsman.

Our remit is to assess complaints about regulated activities, such as carrying out an insurance contract. Therefore, in a case such as this, we can only assess whether the insurance claim has been dealt with fairly.

NFU was only responsible for indemnifying the costs incurred by Mr and Mrs P with the solicitors in dealing with their case. The solicitors have a professional duty to Mr and Mrs P to advise them on an ongoing basis about their costs position.

NFU had the costs it was asked to pay assessed by a law costs draftsman, who assessed the reasonableness of the costs in terms of time spent and that the charges reflected the work done.

Mr and Mrs P say they have not been able to challenge this as NFU has not kept financial records and not provided them with information they asked for about the costs. It would, however, be for the solicitors to provide such information to Mr and Mrs P.

I can't determine whether certain costs are reasonable. This would ultimately be for a court to decide by way of a detailed costs assessment hearing.

Therefore, while I acknowledge Mr and Mrs P's strength of feeling about some of the costs, without any independent expert evidence to support that certain charges should not have been made or should not have been attributed to their indemnity limits, and that NFU should have been aware of this, I cannot reasonably conclude that NFU has acted unreasonably in settling these costs.

Given this, I am satisfied that NFU has met its obligations under the policy and as the costs have exceeded the limit of indemnity available, it is not obliged to fund any further legal costs in relation to this matter.

#### Is there a new claim?

Mr and Mrs P say that they now have a new, separate claim in relation to the discharge of surface water from their neighbour's property. They say this is potentially against the local authority that gave permission for the arrangement.

NFU says this arises from the same originating cause as the previous claims and also suggested that Mr and Mrs P had changed the dates of occurrence of flooding from surface water in order to gain cover. Mr and Mrs P are very upset about this allegation and consider it to amount to libel. I do not intend to make any finding on whether there is any foundation or not to this suggestion, as I do not think it necessary for me to do so in order to fairly determine this complaint.

Mr and Mrs P says that NFU does not understand the basis of the new claim, as it referred to 'service water' instead of 'surface water' in some communications. However, I note that

NFU has correctly referred to surface water in other communications. I therefore think this was likely a typographical error and I don't think this demonstrates a misunderstanding of the issues.

Mr and Mrs P also say that the fact NFU is seeking to recoup any outlay for a claim for damage to their property from the surface water means they must think there is a case to answer.

Insurers are entitled to make a subrogated claim against a party who by their negligence has caused a loss indemnified by that insurer. However, I do not think this means that Mr and Mrs P have a separate claim under their legal expense insurance cover. NFU has not said that Mr and Mrs P have no cause of action against the neighbour, or local authority, in relation to the surface water but rather that it is related to the previous claims it has already met.

The policy states that that NFU *"will pay for all claims resulting from one or more event arising at the same time or from the same originating cause is £50,000"*.

This wording seems to me to mean that it is not relevant whether there are separate legal causes of action or different respondents; rather it is whether any causes of legal action arise at the same time or from the same originating cause that is relevant.

It is for a claimant to establish their claim, so the burden is on Mr and Mrs P to establish that this is an entirely separate claim. Having considered everything provided, I am not persuaded that there is enough evidence to conclude that Mr and Mrs P have established that this is an entirely separate claim. I will explain why.

Mr and Mrs P say that as the previous claims were about the discharge of sewage waste and the latest issue is surface water it is a separate matter. However, from the papers provided, it seems the arrangements for the discharge of surface water from the neighbour being complained about were made around the same time as the new sewage system. And while Mr and Mrs P *may* have a separate cause of action or legal claim against the local authority but that claim still arises from the discharge of waste water (whether that is surface or foul waste) from the neighbour's property.

So on the face of it, it seems that this claim arises out of the drainage arrangements made by the neighbours some years ago and so the claim is likely related to the same originating cause as the previous claims. In the absence of any other convincing evidence that it is entirely separate, I do not therefore consider that NFU has acted unfairly in refusing to provide cover for this matter.

### Fence

Mr and Mrs P have also referred to an agreement that NFU would pay for a fence that had been pushed over by their neighbours. I've seen an email from NFU that says that if the cost of the new fence is less than the cost of pursuing the neighbour's for damages, then it would pay it. NFU asked for quotes for the fence but I have not seen any correspondence about the fence since then. And it is not clear if this would have come under the indemnity limit already used up. Without any other evidence, therefore, I am unable to make a finding about whether NFU should make any payment in relation to the fence. I would suggest Mr and Mrs P contact NFU with any relevant quotes (if they have not done so already) and would ask NFU to consider it.

### Panel solicitors withdrawing from panel and other matters

Mr and Mrs P are unhappy that NFU did not tell them the panel solicitors were leaving its panel. Using a panel solicitor does confer some advantages for a consumer, so I can understand their concern about this. However, insurers and solicitors are entitled to make and break such arrangements and I have no power to require an insurer to operate its business in any particular way. I have not seen any evidence that not knowing this in advance caused any impact on the conduct of Mr and Mrs P's case or any other loss to them, other than concern which would have occurred anyway it seems to me. I do not therefore consider that any award is warranted for this.

Mr and Mrs P are also very upset about some internal emails they have seen, which they say are overly friendly and unprofessional. I can see that a few emails had friendly and colloquial greetings in them. However, even if they could be considered unprofessional in themselves (which is not my finding, as this would be a matter for NFU internally) I cannot see that this demonstrates any lack of professionalism in the consideration and handling of Mr and Mrs P's claims. I do not therefore intend to make any award or direction in relation to this either.

### **My final decision**

Despite my sympathy for Mr and Mrs P's situation, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 21 February 2025.

Harriet McCarthy  
**Ombudsman**