

The complaint

Mr L's complaint is about a claim he made on his The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual ('NFU') legal expenses insurance policy, which was eventually declined.

Mr L says that NFU treated him unfairly and wants them to cover his claim accordingly.

Mr L's complaint is brought by a representative, but I shall refer to any submissions made on his behalf as his own for ease of reference.

In this decision all references to NFU include their claims handlers.

What happened

Mr L made a claim on his NFU legal expenses insurance policy for cover for legal costs to bring a claim against a third party in respect of a fire which caused damage to his land.

NFU initially accepted the claim and agreed to consider the appointment of Mr L's own Solicitor, subject to their completing a claims management report and confirming the merits of the claim. Mr L said the merits of his claim couldn't be determined until a report was provided by an expert and this took his Solicitor some time to obtain due to the small field of professionals able to comment adequately on the issue in question. Once the report was obtained, Mr L's Solicitor confirmed to NFU that the claim had reasonable prospects of success and asked for them to cover Mr L's legal costs.

NFU considered the claim and following a number of questions to Mr L's Solicitor, took the view that the legal expenses insurance cover didn't extend to the land Mr L was claiming was damaged so turned down his claim. In particular NFU said Mr L was insured for his home and a secondary home but the cover for the secondary home didn't extend to covering the land that was damaged in the fire. Mr L didn't agree. He said that NFU were aware of the additional land he owned in relation to his secondary home and that this should have been covered by the insurance. He was also unhappy with the considerable delays in NFU dealing with his claim which resulted in him pursuing it himself and incurring legal costs.

Our investigator considered Mr L's complaint and concluded it should be upheld. She said NFU should cover Mr L's claim and pay his reasonable legal costs from the date the claim should have been accepted. The investigator also said that she didn't think the delays were down to NFU in the main, but that NFU had paid Mr L £100 in compensation for part of these, which was adequate compensation. Mr L accepted the investigator's view, but NFU did not. As such the matter has been passed to me to determine.

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 uphold Mr L's complaint for broadly the same reasons set out by the

investigator. Before I explain why, I wish to acknowledge the submissions made by each party. Whilst I've read everything they've said, I won't be addressing each and every point. That's not intended to be disrespectful but rather reflects the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of Mr L's complaint, namely whether NFU treated him fairly.

The main issue for me to determine here is whether Mr L's legal expenses insurance policy extends to the claim he made. The claim Mr L was making was for damage to his property as a result of the inaction of a third party. The policy covers:

"Property protection:

1) negotiate for an INSURED PERSONS legal rights in a civil action: and/or

2) arrange mediation; for a dispute relating to material property (including the INSURED PERSONS principal HOME and SECONDARY HOME) which is owned by an INSURED PERSON, or for which an INSURED PERSON is responsible, following:

a) an event which causes physical damage to such material property, provided that the amount in dispute is more than £100;

b) a legal nuisance (meaning an unlawful interference with an INSURED PERSONS use or enjoyment of their land, or some right over, or in connection with it);

c) a trespass."

"SECONDARY HOME" is defined as "Private dwellings and/or private land owned by the INSURED PERSON or for which the INSURED PERSON is responsible, which is used for residential purposes only and which the INSURED PERSON has told US about."

The claim Mr L is making is for land that forms part of his secondary home. NFU say however that they did not agree to insure this land when he took out the cover with them and that cover can't be expected to apply to risks they have no knowledge of. In particular they feel that the intent behind the legal expenses cover is for it to be linked to the policy risks they were insuring generally as part of the home insurance Mr L took out and this insurance didn't extend to the land in question.

I've looked at the correspondence between the parties and I can see that Mr L did tell NFU about the land in question in an thread of emails sent on 27 June 2018. In those emails he said that he owned a circa 200-acre estate and that there was an additional 21 acres with the house. He also referenced that he had liability insurance in relation to the 200 acres and the wider 1500 acres for which he has freehold sporting rights. The land that Mr L wishes to bring a claim for is in relation to the 200-acre estate. Mr L says these emails were sent to NFU before the policy was in place and as such, he did tell them about it.

I've thought about what Mr L has said and I'm satisfied that his claim does fall within cover. And whilst it's true that the wider home insurance policy doesn't reflect cover for all of the land Mr L owns, including the land that is the subject of this dispute, that's not mirrored in the legal expenses insurance policy. So, whilst it might have been NFU's intention for that to be the case, the terms don't support their position. If it was NFU's intention for this land to be excluded under the legal expenses insurance cover, then this should have been reflected in those terms. In the absence of that I don't think it's fair for NFU to take the position they did because of what their intention was. And it's not correct that NFU had no knowledge of the land in question. The position is that that they didn't provide different sorts of cover for it which were quite separate from the legal expenses insurance policy. The requirement in the legal expenses insurance policy is not for NFU to specifically agree to cover this land, but rather for them to be made aware of it. I'm satisfied that they were aware of it before they provided Mr L with the cover, which started to run in 2018 in relation to the secondary home, so I think Mr L has complied with the policy terms. Because of this I think it's right that NFU agree to cover Mr L's claim subject to the remaining policy terms and discharge his

reasonable legal fees incurred by Mr L from the time they should have accepted his claim.

Turning now to the delays Mr L has complained of in NFU dealing with his claim. I agree with the investigator that these were in the main due to the considerable time it took Mr L to obtain an expert report and disclose this to NFU together with a merits assessment of his claim from his Solicitor. Beyond this the exchanges between the parties on the question of cover took place over a two-month period, following which cover was declined by NFU.

Whilst I don't agree with the position NFU took on the question of cover, I can see that they did pay Mr L £100 in compensation for the time it took them to reply to his complaint. Mr L didn't need to wait for NFU to reply to him in order to refer his complaint to the Financial Ombudsman Service for the time that he did because he had a statutory right to do so after 8 weeks had elapsed since making his complaint. As such I think the compensation paid by NFU adequately covers the two-month period in which his claim being progressed was stalled between the expert's report and opinion on merits being expressed to NFU and their declining cover.

Putting things right

To put things right I direct NFU to cover Mr L's legal expenses insurance claim subject to the remaining policy terms and discharge his reasonable legal fees from the time they should have accepted his claim.

If Mr L has paid those fees himself then NFU should pay him interest of 8% per year simple on the sum they will pay him from the date they should have accepted his claim, until those costs are paid.

My final decision

For the reasons set out above, I uphold Mr L's complaint against The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 January 2025.

Lale Hussein-Venn
Ombudsman