

The complaint

Mr A complains that The National Farmers' Union Mutual Insurance Society Limited (NFU Mutual) voided his home insurance policy and didn't pay his claim.

What happened

Mr A took out a home insurance policy with NFU Mutual to insure his home in August 2023. In December 2023, his property was unfortunately damaged due to a falling tree following a storm, so he contacted NFU Mutual to raise a claim.

NFU Mutual initially dealt with the claim and appointed loss adjusters. But during the claim they identified that Mr A had an ongoing claim with his previous insurers that hadn't been concluded yet. They said Mr A didn't tell them this when he took out the policy, despite them asking if he had made any claims.

NFU Mutual said if they had been told about the ongoing claim, they wouldn't have offered him cover, so they avoided the policy. And because the policy effectively then didn't exist, they didn't need to deal with the claim. Mr A didn't think this was fair and complained. He didn't think he'd answered any questions incorrectly when he took out the policy, and he said NFU Mutual had acted unfairly by changing the reasons for declining his claim, including questioning the construction of his property.

NFU Mutual responded to the complaint, but they didn't change their stance on avoiding Mr A's policy. Unhappy with their response, Mr A brought the complaint to this service. He said the claim with his previous insurer from December 2022 was ongoing and had been delayed in being processed. He said he considered the question asked of whether he had 'made a claim' to mean something that was completed rather than pending. Mr A also said NFU Mutual hadn't provided an explanation as to what an 'uninsured loss' was – which meant he couldn't properly answer the question.

I wrote to both parties and explained I was minded not to uphold the complaint. I explained that I'd considered the available evidence and I was satisfied NFU Mutual could demonstrate that a misrepresentation had occurred. I also said I'd seen evidence that persuaded me NFU Mutual wouldn't have provided cover had they known about the previous claim when the policy inceptioned. So I thought NFU Mutual had acted fairly by avoiding the policy.

I invited both NFU Mutual and Mr A to respond to my initial findings with anything they wanted me to consider further. NFU Mutual agreed with my findings and said they were satisfied Mr A was asked a clear question at the point the policy was sold and failed to answer it correctly. They said if Mr A didn't understand what was being asked of him, he could have stopped the handler to clarify.

Mr A also responded to my findings. He said CIDRA was introduced to protect consumers and he felt NFU Mutual were acting unfairly as they hadn't properly explained what an 'uninsured loss' was – which CIDRA required them to do.

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.

I should start by explaining that I'll be focusing on the main cause of the policy being voided, which is the issue around Mr A not disclosing his claim history. While I appreciate Mr A has also raised concerns over NFU Mutual relying on the construction of his property as a reason for decline, this isn't the main reason.

As part of my review of this complaint, I'm required to consider relevant law and regulations, which here is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to take reasonable care, and does make a misrepresentation, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a 'qualifying' misrepresentation. For it to be a qualifying misrepresentation, the insurer must show they would have offered the policy on different terms - or not at all - if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

When Mr A took out the policy with NFU Mutual, he was asked a series of questions. The one relevant to this complaint is whether he'd made any insurance claims, suffered any uninsured losses, or had a claim made against him in the past five years. NFU Mutual says that Mr A didn't correctly answer this question. So, I need to first consider whether Mr A took reasonable care not to make a misrepresentation when he applied for and took out the policy.

When considering whether a consumer has taken reasonable care, I need to decide whether the questions they were asked during the sales process were clear. Having looked at the question asked, I'm satisfied it was clear enough to prompt a reasonable consumer to realise NFU Mutual wanted to know if any claims had been made previously.

I appreciate Mr A has said he did not have confirmation that the claim was accepted at the time he took out the policy with NFU Mutual, and it also hadn't been paid at that stage either. And I also appreciate Mr A has since provided additional testimony and said NFU Mutual failed to explain what an 'uninsured loss' was.

Importantly here, the test as to whether Mr A took reasonable care is one of a reasonable consumer, not one unique to Mr A. So, while I take on board what he's said about his understanding of what he needed to disclose, I must consider what a reasonable person would have answered when asked the question he was asked.

I've considered the question very carefully. And overall, I think a reasonable consumer would understand that being asked '*have you made any claims*', would include those that had been submitted to an insurer, even if they hadn't been concluded.

I've also thought about whether being provided with a definition of what an 'uninsured loss' is, would have changed the way Mr A answered the question – but I don't think it would have. I say this because the question asked did not only contain this term, but also asked

whether anyone at the property had *'made a claim, or had a claim made against them'*. I'm therefore satisfied a clear question was asked and the evidence demonstrates that a misrepresentation occurred when the policy was inceptioned.

I've then gone on to consider whether I'm satisfied the misrepresentation was qualifying. NFU Mutual has provided evidence from an underwriter which says if they had known about the ongoing claim, they wouldn't have provided cover at all, as it's not within their risk appetite to provide cover where there is an open claim. It follows I'm satisfied the evidence shows the misrepresentation was qualifying and therefore NFU Mutual was entitled to apply the relevant remedy available to them.

NFU Mutual haven't provided any evidence to demonstrate Mr A's misrepresentation was either deliberate or reckless, so I think it would be fair for them to reply on the remedies available to them for a careless misrepresentation. CIDRA says, in cases of careless misrepresentation, if an insurer wouldn't have offered the policy at all, the insurer may avoid the contract and refuse all claims but must return the premiums paid. As NFU Mutual have done this in line with what they are required to do under CIDRA, I see no reason to interfere with this decision.

Conclusion

I appreciate my decision will come as a disappointment to Mr A and I was very sorry to hear about the damage that was caused to his property. I also appreciate the impact having to declare that he has had insurance cancelled going forwards will have.

But my role is to determine whether NFU Mutual acted fairly and reasonably, having relied on all the available evidence. And having done so, I don't find NFU Mutual acted unfairly in declining the claim or in avoiding the policy. And as CIDRA reflects this Service's long-established approach to misrepresentation cases, I find that allowing NFU Mutual to rely on it to avoid Mr A's policy produces a fair and reasonable outcome in this particular complaint.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 March 2025.

Stephen Howard
Ombudsman