

The complaint

Mr and Mrs W's complaint is about the handling of a claim under the legal expense section of their home insurance policy 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 W hold a policy with NFU. The complaint relates to a claim made by Mr W, so I will refer to him throughout.

In August 2022, Mr W made a claim under the legal expenses section of the policy, as he wanted cover to recover money owed to him for work carried out and damages for termination of his services without notice.

NFU referred the claim to one of its panel of pre-approved solicitors to assess. In mid-October 2022 they advised that, while they thought Mr W would have been considered to be an employee, they did not think there were reasonable prospects of Mr W's claim succeeding. The solicitors also said the employer was based overseas and they could not advise on the law in the country in question. As the policy requires any claim to always have reasonable prospects of success, NFU said there would be no cover. NFU advised Mr W to get a barrister's opinion of his own if he did not agree with this, which he did.

In mid-February 2023, Mr W's barrister said the loss of income claim could be heard in the UK and thought there would be a more than 51% chance of his claim succeeding. NFU therefore paid the cost of this advice and agreed cover. However, given the nature of the claim, NFU could not offer a suitable panel solicitor to act for Mr W. It therefore agreed that Mr W could instruct a solicitor of his choice.

Mr W says he eventually found a solicitor in September 2023 and NFU agreed cover for the employment dispute. However, Mr W was not happy with the solicitor's handling of his case and in January 2024, Mr W asked to use a direct access barrister to act going forward.

NFU was concerned this would in effect mean he would be a litigant in person and at risk of personal costs and said this was excluded under the policy. It said it would cover a non-panel solicitor to run the claim and use the barrister but did later agree to Mr W using the direct access barrister. However, NFU asked for an opinion from the direct access barrister about whether Mr W was likely to be able to prove he was an employee and that they sign terms of appointment. NFU said the policy only covers legal action in the UK and so the claim for legal proceedings in the foreign jurisdiction would not be covered.

Mr W was unhappy with NFU's handling of his claim and complained. NFU confirmed its position by way of a final response letter in April 2024, that it would only cover proceedings

in the UK and would need confirmation that the barrister considered he could prove he had a contract of employment. NFU also said it tried to move the claim along and has not caused any unreasonable delays. Mr W asked for an exception to be made so that it covered his costs of pursuing legal action overseas but it cannot do so as it would not be fair to all its customers. I understand Mr W issued proceedings in the overseas jurisdiction in April 2024.

As Mr W remained unhappy with NFU's response, he referred the complain to us. He has made a number of points in support of his complaint. I have considered everything he has said but have summarised his main points below:

- NFU and its claims-handling agents will not make clear which one underwrites the legal expenses cover. If the claims-handlers are the underwriter then it has not properly separated out its business as required by statute.
- It took two months of aggravation and paying for his own barrister's opinion to get NFU to advance the claim.
- NFU has breached the regulations that allow claimants freedom to choose their own legal representatives.
- While NFU agreed to a direct access barrister, it has systematically obstructed him being able to advise and refused to pay for a conference saying he wouldn't be qualified as he wouldn't have conduct of the case.
- He does not consider the conditions for direct access barristers is reasonable. For instance, NFU won't agree to pay any fees upfront, only at the end of the case.
- NFU terminated cover twice and told him he had to protect his time limits, so he had little choice but to start legal proceedings in the foreign jurisdiction.
- He expects to succeed in his legal claim but if NFU has prejudiced his claim, or he cannot conclude the claim because of NFU then it is on notice that he would claim against it around £300,000.
- NFU's handling of the matter has caused him huge stress and having medical treatment for and mental health issues. He has provided some information about his serious health conditions.

One of our Investigators looked into the matter. She thought that NFU had acted reasonably overall but there had been some delays on its part for which it should pay Mr W £200 compensation.

Mr W does not accept the Investigator's assessment, which he says is in breach of Article 6 and rules of natural justice. He says the last minute action to refuse his cover has put him in a very difficult situation, having to start proceedings overseas to protect his legal position.

Mr W has raised again that the claims-handlers told him they underwrite the policy and NFU has refused to say whether it is the actual insurer. Mr W also says that NFU has refused to act in accord with The Insurance Companies (Legal Expenses Insurance) Regulations 1990 in that it refused to agree to him having legal representation which is most concerning, as the claims-handlers admit to being the underwriter and are prohibited by these regulations to operate as the claims-handlers and insurer.

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.

Who underwrites the legal expenses cover?

As stated above, NFU is the underwriter of Mr W's legal expenses cover. NFU confirmed this to Mr W in a letter dated 11 April 2024 and it is also set out in the policy as follows:

"...[the claims handling-agents] ... administers the independent claims handling service and ... [another entity] which administers the legal advice helpline on OUR behalf."

And the policy defines "WE, US, OUR" as *"The National Farmers Union Mutual Insurance Society Limited"*.

As Mr W has raised, NFU is required by statute to separate its legal expenses business from its other liabilities by doing this. However, the claims-handling agents are acting on behalf of NFU and it is responsible for anything they do or do not do.

I am therefore satisfied that this complaint is correctly set up against NFU.

Mr W feels strongly there has been a breach of the regulations governing the handling of legal expenses insurance in the UK and says that NFU and the claims-handling agents have not made clear which one provides the actual cover. As stated above, I think the position has been made sufficiently clear. I can see, however, that in an email in April 2024, the claims-handling agents told Mr W it was the underwriter but this is incorrect. This was an error but I do not consider it has had any impact on the outcome or handling of his claim or the outcome of the complaint.

Policy cover

Mr W's policy provides cover for various legal disputes. The section of cover that both parties agree is relevant to Mr W's claim is the cover for employment disputes, which states as follows:

"What is insured

1) A dispute relating to an INSURED PERSONS contract of employment or future employment that could be heard in an employment tribunal or a court of law."

As with all insurance policies this cover is subject to various terms and conditions, including that:

"We agree to provide the insurance described in this POLICY, in return for payment of the premium and subject to the terms, conditions, exclusions and limitations set out in this POLICY, provided that:

1) REASONABLE PROSPECTS exist for the duration of the claim;

2) the DATE OF OCCURRENCE of the insured incident is during the PERIOD OF COVER;

3) any legal proceedings will be dealt with by a court, or other body which DAS agree to, within the COUNTRIES COVERED; and

4) the insured incident happens within the COUNTRIES COVERED.COUNTRIES COVERED."

The requirement that a legal expenses claim has reasonable prospects is not unusual or unfair.

The policy sets out that the countries covered are:

“For Contract disputes, Bodily injury and Legal defence:

The United Kingdom of Great Britain and Northern Ireland, the European Union, the Isle of Man, the Channel Islands, Albania, Andorra, Bosnia Herzegovina, Gibraltar, Iceland, Liechtenstein, Monaco, Montenegro, North Macedonia, Norway, San Marino, Serbia, Switzerland and Turkey.

For all other insured incidents under this cover:

The United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands.”

The policy is clear that it will not cover any legal action for employment claims outside “*The United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands.*” Therefore, NFU is not liable for any costs or expenses incurred by Mr W in issuing proceedings or taking any other legal action in the country he did.

Mr W thought it would be fair for NFU to make an exception in his case but I do not think it was obliged to do so. The terms are clear and are not inherently unfair. I do not therefore think it acted unfairly in refusing to extend cover when it is not provided for in the policy.

Mr W has also said that he was in effect forced to issue in the overseas jurisdiction by NFU’s mishandling of his claim, so suggests it is responsible for his costs of doing so for this reason. I will address this point below.

Handling of the claim and appointment of direct access barrister

As stated above, Mr W’s policy, like almost all legal expenses insurance policies, requires that any claim has reasonable prospects of succeeding for the life of the claim. This is therefore something that will be assessed at stages throughout a claim as new information or evidence comes to light as the matter progresses. We do not regard such policy terms unfair or unreasonable.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success and that it is proportionate to pursue. However, it is usual in legal expenses policies for the insurer to appoint lawyers to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case. NFU did just this and arranged for one of its panel solicitors to advise. I do not think there is evidence of any undue delay on its part in arranging that and it is not responsible for the time the solicitors took to assess the claim.

We do not assess the merits of the legal claim, or the conduct of the legal case, that is not within our expertise. 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, reasonably and in line with the policy terms and conditions.

There is no evidence that would suggest the panel solicitor’s opinion was so obviously flawed that NFU should not have relied on it. NFU told Mr W he could get his own legal opinion and if that was favourable it would reconsider and reimburse the cost of any such advice. I think this was reasonable and is in line with what we would expect an insurer to do in such circumstances.

Mr W did provide a favourable opinion from his barrister. In light of this, NFU agreed to

reimburse the cost of this opinion and instruct solicitors to act for Mr W. When it could not find a suitable panel solicitor, NFU agreed to instruct a solicitor of Mr W's choice. Again, I think that was reasonable. However, there was some delay during this period and I think NFU could have done more to help find alternative solicitors. I have not, however, seen any evidence that this delay caused any impact on the outcome of Mr W's claim. The investigator has recommended that NFU pay the sum of £200 compensation for this. I agree this is reasonable.

Mr W own solicitors were acting from August 2023 until early 2024. Mr W says he asked them to find a barrister to act for him but was not happy with their service. NFU is not responsible for anything the solicitors did including the time taken to deal with Mr W's claim. This is because they are independent professionals, subject to their own professional regulation. They were not acting on behalf of NFU.

Mr W subsequently asked NFU to authorise him to deal with the case himself and use a direct access barrister.

NFU initially said this would be excluded under the policy based on the following exclusion:

"Litigant in person

Any claim where the INSURED PERSON is not represented by a law firm, barrister or tax expert."

I think NFU had legitimate concerns about the management of the claim without solicitors having day-to-day conduct that it was entitled to raise. However, NFU did subsequently agree to this arrangement in principle.

I do not therefore consider that NFU has breached the regulations that provide a policyholder with the right to choose their own legal representative, at the point that proceedings become necessary. The relevant regulations allow freedom of choice sooner than this, if the legal expenses insurer has not undertaken to separate its legal expenses business from its other classes of business. Mr W suggests this has not been done, as the claims-handling agents is also the underwriter of his cover. As set out above, I am satisfied that NFU is the underwriter and it has separated the handling of legal expenses claims from its other classes of business by using the claims-handling agents to manage claims on its behalf.

NFU asked Mr W to instruct the barrister to advise on the prospects of him establishing that he was an employee (rather than self-employed). It did this because, although previous advice had said it was likely he was an employee, Mr W had instructed an overseas lawyer to write a letter before action to the respondent which did not mention him being an employee or having a contract of employment. Whether someone is an employee or not is potentially a complex issue and is an important basis for Mr W's claim for payment. While I appreciate Mr W says it is clear he was an employee, I think there were reasonable questions to raise. And as stated above, NFU is entitled to evidence that the claim has reasonable prospects of success throughout. I do not therefore think this was unreasonable and do not think it was an attempt to hinder Mr W's claim.

In addition, NFU asked the barrister to agree terms of appointment. Mr W wasn't happy with the terms, including that payment of his fees would be at the end of the claim. NFU offered to pay the solicitors to assist and provide the advice about prospects but Mr W was not happy with this. Matters therefore reached an impasse and around that time (in April 2024) Mr W says he issued court proceedings in the overseas jurisdiction.

I have considered what happened carefully. Having done so, I do not think that NFU acted unfairly or unreasonably. It is entitled to agree terms with the legal representatives and in line with most legal expenses policies it is intended to indemnify for unrecovered costs, which would usually only become known at the end of the legal case. In any case, it was also entitled to the advice regarding Mr W's status as an employee.

Ultimately, NFU confirmed there was cover for UK litigation, provided there were reasonable prospects of Mr W proving he was an employee and provided the barrister agreed terms. I do not think this was unreasonable.

Mr W has issued proceedings in the country in which the respondent is based. These costs are not covered for the reasons set out above. He says he had no choice but to do so because of NFU's mishandling of his claim but I do not agree. NFU was entitled to the advice about Mr W's employment status and other than the delay in 2023, which I have already addressed, I do not think it was responsible for any undue delay thereafter. I do not therefore think NFU has acted unfairly in declining to pay for any of the costs involved in this.

Finally, Mr W says this matter is in breach of Article 6. I think he means Article 6 of the Human Rights Act 1998, which is the right to a fair trial. I do not think that anything NFU has done, or has not done, has denied him his right to a fair trial of his legal claim. It was entitled, for all the reasons set out above, to refuse to pay the costs of action in an overseas jurisdiction.

This is high value claim and I can see how stressful it has been for Mr W but overall I do not think that NFU has hindered his ability to pursue his legal claim or acted unfairly or unreasonably in relation to what it has agreed to cover.

My final decision

I uphold this complaint in part and require The National Farmers' Union Mutual Insurance Society Limited to pay Mr and Mrs W the sum of £200 compensation for the distress and inconvenience caused by its handling of Mr W's claim.

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

Harriet McCarthy
Ombudsman