

The complaint

Mr and Mrs C are unhappy with what The National Farmers' Union Mutual Insurance Society Limited did after they made claims on their legal expenses insurance policy.

All references to NFU include its agents and claims handlers.

What happened

Mr and Mrs C experienced significant flooding problems at a property they purchased. They sought assistance under their legal expenses policy to pursue a claim against the previous owners of the property for misrepresentation. They also sought help with the defence of a separate forfeiture claim being pursued against them by the landlord of leased woodland where they'd carried out drainage works.

By March 2020 NFU had agreed both claims could be progressed by Mr and Mrs C using their own solicitor (K). There were issues over whether the misrepresentation claim was likely to be successful. In September 2022 Mr and Mrs C said their solicitor was retiring. Alternative firms were approached but weren't able to take on the claims. In March 2023 Mr and Mrs C provided counsel's advice on the misrepresentation claim which concluded this was likely to succeed.

There were further attempts by NFU and Mr and Mrs C to find a firm that could act for them. These were also unsuccessful. By June 2023 Mr and Mrs C had found an alternative firm (L). NFU asked them to complete a 'Claims Management Report' (CMR). That was returned on 27 September 2023. There was further discussion over what indemnity limit remained and whether a separate limit would apply for each claim.

At the end of October NFU said it had incorrectly treated the two claims as separate matters. However, given the time that had passed it would allow total indemnity of £100,000. Mr and Mrs C disputed that amount had been exceeded as it included costs they'd incurred privately. NFU agreed terms of appointment with L in January 2024. In response to the complaint Mr and Mrs C made it said costs would be assessed at conclusion of the claim. If there was then any indemnity remaining it would consider reimbursing Mr and Mrs C for costs they'd incurred in, for example, obtaining expert reports. It agreed to pay £250 in recognition of the impact on them of identified claims handling issues.

Our investigator thought NFU had made reasonable efforts to find a panel firm that could act for Mr and Mrs C after their previous solicitor retired. It was unfortunate the firms it approached were unable to act but he didn't think NFU was responsible for the delay this caused in their claim being progressed.

Once Mr and Mrs C had identified L he thought it was reasonable NFU asked it to complete the CMR (including an updated prospects assessment). However, after that was returned there had been delays in confirming L's appointment. So cover should be backdated to 27 September 2023. And NFU should reimburse Mr and Mrs C with costs they'd paid L to progress the claim since then (plus interest).

He thought it was fair of NFU to say it would only consider disbursements Mr and Mrs C had incurred at the end of the claim given these had been incurred without its agreement. But he wasn't persuaded NFU was correct to say one indemnity limit should apply to both claims. However, as it had now agreed to provide separate limits that wasn't something which had impacted Mr and Mrs C. But he accepted the further delay he'd identified would have caused Mr and Mrs C additional distress and inconvenience. He said it should pay them £200 (in addition to the £250 it had already agreed).

NFU agreed to his outcome. Mr and Mrs C didn't agree. They made detailed submissions (all of which I've read) and in summary:

- They set out in detail the background to the matter and drew attention to the impact the problems at their property and the underlying disputes had on them both financially and emotionally. They thought that could have been avoided without the delays by NFU they believed had taken place.
- They didn't accept the only delay here was from October 2023 until January 2024. They thought NFU should have allowed them to move to L from when that firm was suggested which they said was in May 2023 (particularly given the number of firms they'd already approached at that point). But NFU had insisted they approach other panel solicitors who weren't then able to act for them.
- It wasn't necessary to ask L to complete a further prospects assessment given they had already provided counsel's opinion on this. And NFU hadn't made clear to L what the next steps were or what its terms of appointment would be. Nor did it make clear the importance of completing the CMR.
- It wasn't acceptable that after the claims had been ongoing for a number of years NFU had then raised concerns over the level of indemnity that should apply to them. And this had caused further delay to the progress of their claim. NFU then wrongly added privately paid costs to the costs incurred in relation to the claims. That led it to incorrectly say the indemnity limit for their claims had been exceeded.
- They drew attention to more recent issues that had taken place in relation to their claims including where they said NFU was revisiting the issue of whether a single limit of indemnity applied to them. They said delay by NFU had caused them to take money from their pension pot in order to continue to fund their claims.

So I need to reach a final decision.

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 appreciate this has been an extremely distressing experience for Mr and Mrs C. I was sorry to learn of the financial and emotional impact on them which they've set out in detail in the submissions they've made. It's clearly been a challenging and difficult time for them. However, the issue I need to consider is whether NFU got things wrong in dealing with the claims they made. And if it did what the impact on Mr and Mrs C of any failings was. But as I think Mr and Mrs C are aware I can't consider here any concerns they have about the decisions solicitor's firms took when deciding whether to act for them or not. That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP).

Those activities include regulated activities. “*Carrying out a contract of insurance*” is a regulated activity. That’s why we can consider what NFU did here. But when acting in a legal capacity a law firm aren’t carrying out a regulated activity (and their actions aren’t covered by any of the other activities we can consider). So concerns about the actions of those firms (including their decision not to act for Mr and Mrs C) aren’t something I can consider.

Turning to the actions of NFU, the relevant rules and industry guidelines say it has a responsibility to handle claims promptly and fairly. It shouldn’t reject a claim unreasonably. And I think the key issue here is whether it did anything wrong following the retirement of Mr and Mrs C’s previous solicitor which meant an alternative had to be found. I’ve looked first at the terms and conditions of Mr and Mrs C’s policy.

The cover it provides is to pay “*costs and expenses incurred following an insured incident*”. And the definition of ‘Costs and Expenses’ includes “*all reasonable and necessary costs charged by the Representative and agreed by [claims handlers] in accordance with the [claims handlers] Standard Terms of Appointment*”. So it isn’t legal cover in itself the policy provides but payment for the costs of that cover. But the policy goes on to say “*on receiving a claim, if legal representation is necessary, [claims handler] will appoint a Preferred Law Firm or in house lawyer as the Insured Person’s Representative to deal with the claim*”.

As a result, following the retirement of the solicitor who was acting for Mr and Mrs C, I think NFU should have taken reasonable steps to find a replacement. I think it did. I can see it approached a number of its panel firms to see if they’d be prepared to progress the matter but none of them were able to do so. And it did then provide suggestions to Mr and Mrs C of other firms they could approach who might be able to assist. It’s unfortunate they also weren’t able to do so but I don’t think that was because of anything NFU got wrong.

Mr and Mrs C did subsequently identify L could potentially act for them. It’s not clear if that was in May 2023 as they’ve suggested; the first email NFU has provided referencing L’s appointment is from Mr C on 12 June. Prior to that correspondence focuses on other firms that might be able to progress the claims. In any event those discussions appear to have been ongoing until the end of June with Mr and Mrs C pursuing the appointment of a different firm with whom agreement couldn’t be reached. L then contacted NFU at the end of July and a CMR was sent to it for completion. However, it does appear there was some delay here as Mr and Mrs C say NFU agreed that would be sent at the end of June.

Mr and Mrs C don’t feel the CMR was necessary because they’d already provided a prospects assessment on their claims from counsel. I understand that but it’s a condition of their policy that “*reasonable prospects exist for the duration of the claim*”. As some months had passed since the previous positive opinion on that was provided, I don’t think it was unreasonable NFU asked L to confirm that was still the case. Of course, if L had felt the previous counsel’s opinion was sufficient to satisfy the prospects requirement, it could have referenced that in its response.

I also think NFU did make clear to L what was required and that the CMR needed to be completed. The covering email it sent explained the purpose of the CMR and confirmed that this didn’t represent confirmation of appointment or authority to incur costs. The email also says it included sample terms of appointment for L to review.

And it invited it to get in touch if it had any questions about these. I think it would have been clear to L what the next steps in the process were and I haven’t seen evidence it made further contact with NFU until the CMR was returned at the end of September.

However, I think NFU were likely wrong to then say these claims would fall within the same indemnity limit. I appreciate the policy says the “*most we will pay for all claims resulting from*

one or more event arising at the same time or from same originating cause is £50,000". And I accept both claims are linked to the flooding which occurred at Mr and Mrs C's property. But I'm not persuaded that link represents a close enough connection to say it's a unifying factor between their claims. However, that's not something I need to reach a finding on because NFU then agreed each of these claims should attract its own limit of indemnity. I also note this issue was resolved within a relatively short time (around a month) of it first being raised.

What did then cause delay to the progress of the claims was the confusion over what level of indemnity remained for them I think it would have been better if NFU had sought clarify from Mr and Mrs C on whether the costs they'd incurred should form part of the indemnity limit. It's clear Mrs C in particular was extremely distressed on being told no cover remained under the policy. And it does appear to have taken some time for this issue to be resolved.

I've gone on to think about what NFU needs to do to put things right. For the reasons I've explained I don't think it was responsible for the delay in finding an alternative firm to act for Mr and Mrs C. But I do agree there was a delay in agreeing terms of appointment with L after they returned the CMR at the end of September. I also think there was some delay in sending that document to L in the first place. Having said that I'm mindful of the fact that discussions over the terms of appointment (and for example what hourly rate should be paid) could reasonably have taken time.

Taking all of that into account I think the fair outcome is for cover under the policy for both claims to be backdated to 27 September 2023 and for cover to be provided for costs and expenses incurred in that period which the policy would have covered. I don't think it's right Mr and Mrs C should be out of pocket for those amounts so if there are costs they have already paid then NFU should reimburse those sums to them (plus interest at 8% simple from the date of payment to the date of settlement). But as those are amounts that would always have counted against the indemnity limit I also think it's fair NFU should include those sums (less the interest I've directed) in that calculation.

I also think the delays for which NFU is responsible will have caused Mr and Mrs C unnecessary distress and inconvenience. But for the reasons I've explained I think that period is limited to a potential issue with initially sending the CMR to L and to a delay in agreeing terms with L between October 2023 and January 2024. I know this was a difficult and stressful time for Mr and Mrs C and it led them to have unnecessary contact with NFU. However, as they'd already instructed L they were legally represented throughout most of this period and it was therefore able to take action to ensure progress with their underlying claims. Taking all that into account I think total compensation of £450 (inclusive of the £250 NFU already offered) does enough to put things right in this case.

Mr and Mrs C also remain concerned that some costs they incurred for expert reports haven't been refunded to them. But from the information I've seen these do appear to be costs that were incurred without approval from NFU. And the policy only covers reasonable and necessary costs agreed in accordance with NFU's standard terms of appointment. Those terms explain that prior agreement must be sought for expenses relating to the claim and that costs and expenses will be considered at the conclusion of the claim.

They do provide NFU with the discretion to make interim payment but I don't think in the circumstances of this case it would be fair to expect it to do so. These costs weren't pre-authorised and there remains an issue over whether there will be sufficient policy indemnity remaining to cover them.

Mr and Mrs C have also referenced more recent issues in relation to their claims. I'm sorry to hear they continue to experience difficulties but those aren't matters I can consider in this decision. We can only consider complaints where a financial business has first had an opportunity to do so. So if Mr and Mrs C are unhappy with what NFU has done more recently they'll need to raise those concerns with it before we'd be able to look into them.

Putting things right

NFU will need to reimburse any costs Mr and Mrs C have paid L for their misrepresentation and forfeiture claims that would have been covered by the policy from 27 September until terms of appointment were agreed with L. NFU will also need to pay interest at 8% simple on those amounts. And it will need to pay Mr and Mrs C a total of £450 in recognition of the distress and inconvenience they were caused by what it got wrong.

If NFU considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs C how much it's taken off. It should also give Mr and Mrs C a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I've decided to uphold this complaint. The National Farmers' Union Mutual Insurance Society Limited will need to put things right by doing what I've said in this decision.

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

James Park
Ombudsman