

The complaint

Mr and Mrs B complain about The National Farmers' Union Mutual Insurance Society Limited's ('NFU's') decision to withdraw cover under their legal expenses insurance policy.

What happened

Mr and Mrs B hold legal expenses insurance cover with NFU. They took legal action against a third party relating to a property and land dispute, and NFU covered the claim. The case went to trial, but Mr and Mrs B lost the case. They were represented in that litigation by their solicitors (that I'll call A).

In 2021, Mr and Mrs B made another claim under their legal expenses cover. They wanted to bring a legal claim against A for professional negligence, as well as the barrister who acted for them in the original litigation. NFU referred the claim to its panel solicitors for advice on whether the legal action had reasonable prospects of success, as required under the policy terms. The solicitors asked counsel for an opinion, and counsel concluded in 2023 that legal action wasn't likely to be successful. So, NFU withdrew cover.

A claim was then made against Mr and Mrs B by A for their fees. Following this, Mr and Mrs B made another claim under the policy. They wanted to bring a legal claim against A for failing to comply with NFU's Working Together Agreement document during the original litigation. NFU thought this was a duplicate of the previous professional negligence claim it had already considered. Though it agreed to obtain legal advice to see if there were reasonable prospects of reducing the amount in fees that A was claiming from Mr and Mrs B.

Mr and Mrs B brought a complaint to this service about NFU's decision to withdraw cover for their claim. Our investigator recommended that NFU reconsider the claim in respect of the Working Together Agreement issue, and if there was a valid claim, to arrange for a prospects assessment. Both parties agreed to this.

NFU again referred the claim to its panel solicitors, and they in turn arranged for counsel's opinion on the matter. Counsel concluded in 2025 that legal action wasn't likely to be successful. So, NFU wouldn't continue covering the legal action against A. Mr and Mrs B complained to NFU about this decision.

NFU issued a final response to the complaint on 16 July 2025. It said it was entitled to rely on counsel's advice and maintained that its decision to withdraw cover was fair. It noted that the solicitors had since asked NFU if the policy could be used to help Mr and Mrs B make an offer to the other side. NFU said it had agreed to this as a gesture of goodwill.

Mr and Mrs B brought a new complaint to this service. They were unhappy that cover for their professional negligence claim against A had been withdrawn. They thought that using two barristers to consider different aspects of A's negligence meant that the cumulative impact of A's failings hadn't been assessed.

Our investigator looked into things but didn't recommend the complaint be upheld. He thought it had been reasonable for NFU to rely on counsel's advice that the legal claim didn't have reasonable prospects of success.

Mr and Mrs B didn't accept our investigator's findings and so the matter has been passed to me for a 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.

Mr and Mrs B have raised a number of points in their submissions to this service. However, I'm not going to address each and every point raised and instead will focus on what I consider to be the crux of the matter. I don't mean any discourtesy by this, it merely reflects the informal nature of this service.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must not unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr and Mrs B's complaint.

The policy says that NFU will provide cover so long as reasonable prospects of success exist. The policy explains this must be at least 51%.

This is standard practice for legal expenses insurance. An insurer carries the risk of paying the other sides costs as well as the insured's legal costs if the case is lost. So, it's not unreasonable that an insurer wouldn't want to cover the cost of legal action if it's unlikely to succeed.

Mr and Mrs B have explained why they think counsel's advice was flawed. They've focused on failures made by A, and why they think that if A had fulfilled their duties, they would have acted differently during the original litigation and achieved a more favourable outcome. However, it's not for me to make a finding on this or give an opinion on A's alleged failings.

Counsel's opinion in 2023 was that there were several opportunities for compromise before the trial, and these would have led to a financially better outcome for Mr and Mrs B than what had actually happened. He concluded that a judge was unlikely to accept evidence from Mr and Mrs B that they would have settled with the third party if only they had received different advice from A (or their barrister).

Counsel's opinion in 2025 agreed with this. He also considered the new issue raised by Mr and Mrs B in respect of the Working Together Agreement and concluded that A had been negligent by failing to comply with this. He also thought A had been negligent by failing to advise Mr and Mrs B that their legal fees could have been recovered from their legal expenses insurance. Though, crucially, he explained that this wouldn't be the only consideration by the court.

Counsel said Mr and Mrs B would also need to prove that, but for the negligence, they would have acted differently and settled the case on the other party's terms and avoided the trial and losses they incurred. He explained that whilst Mr and Mrs B would very strongly say they would have (acted differently), he said the weight of evidence was against them. Based on that evidence, he thought A would argue that Mr and Mrs B wanted more land and so they wouldn't have settled (at mediation stage), and he thought A would persuade a judge on this.

I agree with our investigator that counsel's opinion is well reasoned and clear, and I can see no obvious reason why NFU shouldn't have relied upon it.

I've noted Mr and Mrs B's point that they've received two opinions from counsel on separate issues and believe the cumulative impact of A's failings haven't been assessed holistically. They say there wasn't a single error, and the adverse result of the original litigation was due to a pattern of failings on A's part.

Though when counsel gave his opinion in 2025, he referred to the evidence he had reviewed and that included the previous counsel's opinion from 2023. I also note he didn't restrict his opinion to the new issue raised (relating to the Working Together Agreement) but also gave an opinion on a separate area where he thought A had been negligent. So, I don't think Mr and Mrs B have been disadvantaged by a different barrister considering the matter in 2025.

Whilst I appreciate Mr and Mrs B's strength of feeling on the matter, I'm satisfied NFU has considered the legal opinion provided on the likely success of the claim and it was fair for NFU to rely on it.

So, I find that NFU acted reasonably in withdrawing cover when it did.

Mr and Mrs B are aware that they can obtain their own legal opinion if they wish, and if this reaches different conclusions to the current counsel advice, they should provide this to NFU for consideration.

My final decision

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 and Mrs B to accept or reject my decision before 11 March 2026.

Chantelle Hurn-Ryan
Ombudsman