

The complaint

Mr and Mrs M complain about The National Farmers' Union Mutual Insurance Society Limited's ('NFU's) handling of their legal expenses claim.

Any reference to NFU includes the actions of its agents.

What happened

Mr and Mrs M made a claim on their legal expenses insurance policy. They wanted to pursue legal action against a third party for installing infrastructure under a road which they partly own. Initially, NFU didn't think the claim was covered under the policy terms. Mr and Mrs M complained about this.

NFU issued a final response on 1 May 2024. It accepted it could have done more to understand the situation, and noted a claim could be considered under the policy. It paid Mr and Mrs M £150 compensation for its mistake.

NFU then accepted a claim for trespass would be covered under the policy. It 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 legal action wasn't likely to be successful. So, NFU said it was withdrawing cover. Mr and Mrs M were unhappy about this, as they thought all the available evidence and points that they wanted to make hadn't been considered.

NFU provided the solicitor with further information Mr and Mrs M had given. Though the solicitor still didn't think the claim had prospects of success.

Mr and Mrs M complained to NFU about its handling of the claim. They were unhappy their claim had initially been turned down. They also thought the scope of the instruction given to the solicitors was too narrow and ignored central elements of their claim. They thought NFU's customer service had been poor, and because they had concerns about the solicitors, they wanted different solicitors appointed.

NFU's agent issued a final response to the complaint on 19 December 2024. It made the following main points:

- The counsel's opinion was that the legal claim didn't have reasonable prospects of success, and so it withdrew cover.
- After speaking with Mr and Mrs M on 19 November 2024, it provided the solicitor with a further email they wanted to be considered. This didn't change the outcome.
- Also on 19 November 2024, Mr and Mrs M had sent an email asking for NFU not to contact the solicitors again until they'd provided more information. But it had already acted in line with Mr and Mrs M's previous instructions.
- It had explained to Mr and Mrs M that they could challenge the decision to withdraw cover by supplying new evidence or seek an opinion from more experienced counsel.
- It would expect all legal claims to be assessed if there was cover for this and it wouldn't seek to limit instructions to the solicitors.

- It accepted that wrongly turning down the claim initially had led to a delay and paid Mr and Mrs M £150 compensation for this.
- It found no evidence that it hadn't responded to Mr and Mrs M's emails.
- It confirmed that it wouldn't be funding a reassessment of the claim by another firm of solicitors, but it was willing to ask the current solicitors to review further evidence that Mr and Mrs M wanted to submit.

In January 2025, Mr and Mrs M complained again to NFU. They said NFU had advised them they could expect a response to their complaint by 15 January 2025, but they hadn't had a response. They also didn't think they'd had sufficient support from NFU over the previous year, as the claim had been handled by NFU's agent.

NFU issued a final response to the complaint on 21 February 2025. It said it couldn't comment on its agent's handling of Mr and Mrs M's claim. However, it accepted it hadn't communicated with Mr and Mrs M clearly about the handling of their complaint. It paid them £150 compensation for this. Finally, NFU explained that its agent handled claims on its behalf.

Mr and Mrs M remained unhappy and brought a complaint to this service.

Our investigator looked into things but didn't recommend the complaint be upheld. He made the following main points:

- NFU had issued a final response in May 2024 addressing its initial decision to turn down the claim, and therefore he couldn't consider this point as Mr and Mrs M hadn't brought their complaint to this service in time.
- It had been appropriate for NFU to rely on counsel's opinion regarding prospects of success and withdraw cover. He also thought it had been reasonable for NFU to offer to provide the solicitors with further comments that Mr and Mrs M wanted to make.
- NFU had chosen to outsource the claim handling to an agent, and it was entitled to do this. The policy terms made this clear.
- Although Mr and Mrs M were unhappy with NFU's handling of their complaint, he said this fell outside this service's jurisdiction.

Mr and Mrs M 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.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must not unreasonably reject a claim and should handle claims promptly and fairly. 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 M's complaint. In doing so, I've considered up to the date of NFU's final response of 21 February 2025. Mr and Mrs M have a separate complaint with this service about matters after this date.

In this decision, I'll be considering how NFU handled Mr and Mrs M's legal expenses claim. This service can't deal with any concerns Mr and Mrs M have about the panel solicitors and the same applies to any concerns about counsel. Solicitors and counsel are independent legal experts with their own regulator and complaints bodies.

NFU's initial claims decision

NFU did issue a final response on this matter in May 2024, and our investigator was correct to say that Mr and Mrs M brought their complaint to this service outside the six-month time-limit set out in that final response. However, NFU's agent sent a new final response in December 2024 which again addressed this issue (offering Mr and Mrs M further compensation) and again gave Mr and Mrs M a further six months in which to bring their complaint to this service. I'm therefore satisfied I can consider this point. We've let the parties know this.

It's not in dispute that NFU turned down Mr and Mrs M's claim initially when it shouldn't have done so. The claim was made in late February 2024 and was turned down in mid-March 2024. After Mr and Mrs M complained about this, NFU reconsidered the matter and on 29 April 2024 it confirmed it would cover the claim (subject to it having 51% or more prospects of success). So, NFU's error in turning down the claim caused just over a month's delay. In total, NFU paid Mr and Mrs M £300 total compensation for this. I'm satisfied this reflects the impact to Mr and Mrs M by the matter.

NFU's instruction to the solicitors and decision to withdraw the claim

When Mr and Mrs M initially made the claim, they explained they had shared ownership of a road and a third-party developer had installed infrastructure underneath that road in two locations, for commercial gain, without their consent. They said the developer refused to pay them a percentage of the gross revenue even though the developer was paying the other road owner this.

After NFU had initially turned down the claim, NFU and Mrs M had a phone call about the matter. In a phone note dated 29 April 2024, NFU wrote '*I clarified that she wishes to utilise the policy to claim for a trespass with the intention of having the ...system removed*'.

NFU then accepted the claim as covered under the policy (subject to a prospects assessment). It wrote to Mr and Mrs M on 8 May 2024 and confirmed it had appointed a panel solicitor. That letter included a summary of the claim. This said:

'We are covering you for:

A trespass dispute between our customer and a company who installed a [infrastructure system] under a road owned by our customer, and another party. Our customer did not give permission for the system to be installed and wants it removed.'

I'm satisfied that NFU made it clear to Mr and Mrs M what instruction would be given to the solicitors, and this included that they wanted the removal of the infrastructure to take place. NFU also told Mr and Mrs M the solicitors would be in touch with them within two days, and so Mr and Mrs M could have clarified with the solicitors if they weren't sure what was being considered.

In June 2024, the solicitor confirmed the legal claim didn't have reasonable prospects of success. They provided counsel's opinion which set out the circumstances, and said an opinion had been sought on:- the remedies available to Mr and Mrs M; whether they could insist on the removal of the infrastructure; and what options were available to Mr and Mrs M if they wished to enter into settlement discussions. Counsel said the legal ground for any action would be based upon the law of encroachment. Counsel concluded that a legal claim didn't have reasonable prospects of success, and set out their reasoning for that.

Even though NFU asked the solicitors to consider the matter as a trespass dispute, counsel considered the legal ground for any action would be based upon the law of encroachment. So, I don't agree that NFU provided the solicitors with too narrow a scope. The background was given and counsel gave their legal opinion on the matter, as I would expect.

According to the policy, cover will only be provided if the legal claim has reasonable prospects of success, and 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 a claim if it's unlikely to succeed.

I agree with our investigator that NFU was entitled to rely on counsel's opinion when it decided to withdraw cover. That's because counsel didn't think the legal action had reasonable prospects of success. Mr and Mrs M didn't provide any persuasive independent evidence to demonstrate that the advice was flawed. Instead, they thought NFU had failed to properly set out the scope of cover. I've already addressed this above.

Mr and Mrs M then asked for the matter to be reassessed. They said the claim had been classified as an encroachment issue with a less than 51% chance of success and so the claim had been denied. However, they said the primary issue was compensation for ongoing commercial use, and they thought this constituted trespass. They asked for their claim to be reconsidered to account for compensation, as they said that removing the infrastructure may be disproportionate and unnecessary.

On 4 November 2024, Mr and Mrs M emailed NFU with more information and asked for their email to be forwarded to the solicitors. This email set out the scope that Mr and Mrs M thought their case fell under (including trespass and legal nuisance). They said the original approach of pursuing an interdict and removal of the infrastructure might not succeed, and so instead they wanted to propose a revised strategy based on securing financial compensation.

Mr and Mrs M spoke with NFU on 19 November 2024 about the matter, and following this call, NFU sent the above email dated 4 November 2024 to the solicitors on 19 November 2024 at 3.59pm.

The solicitors responded to NFU addressing the points raised. They explained that compensation had already been commented upon by counsel. They maintained the claim still didn't have reasonable prospects of success.

Mr and Mrs M had sent NFU a second email on 19 November 2024 at 4.47pm, which asked NFU not to go back to the solicitors until they'd had the opportunity to set out what they wanted the solicitors to address. They said they were preparing an updated summary of the situation and would send this to NFU shortly.

Whilst it's unfortunate that NFU had sent the solicitors Mr and Mrs M's first email (of 4 November 2024) on 19 November 2024, it did so before it had received the second email asking it not to contact the solicitors. So, I don't think NFU did anything wrong here.

NFU explained to Mr and Mrs M that it could look at the matter again if they obtained a second legal opinion which did find there was reasonable prospects of success, or alternatively it could look at things again if they provided further evidence. This is what I would have expected NFU to do.

Mr and Mrs M are unhappy that NFU's agent issued a final response to their complaint in December 2024 before receiving their updated summary. However, I don't see anything

wrong with this. In that final response, the agent explained that it would send the updated summary to the solicitors once it had been received. I think that was reasonable.

Although Mr and Mrs M wanted NFU to change panel solicitors, I don't think NFU needed to do so. Mr and Mrs M wanted further points considered, and since they didn't want to obtain their own legal opinion at that point, I'm satisfied the most appropriate way forward was for the existing solicitors to be given the opportunity to address those points.

I therefore find that NFU treated Mr and Mrs M fairly in its handling of their claim.

Customer service

I see that on one occasion, Mr and Mrs M had emailed NFU and chased a response over the following two weeks. NFU then let them know their emails had been forwarded to NFU's agent to deal with and also gave Mr and Mrs M the direct email for their agent. Whilst there was a short delay here, I can't see that Mr and Mrs M were particularly impacted by this.

Following NFU's agent's final response of 19 December 2024, Mr and Mrs M complained to NFU that it had told them it would respond to them by 15 January 2025 but didn't do so. Although our investigator had concluded that this aspect of Mr and Mrs M's complaint fell outside our jurisdiction, I've explained to both parties why I'm satisfied I can consider it.

NFU accepted it hadn't been clear with Mr and Mrs M that its agent would be responding to the complaint and so it paid Mr and Mrs M £150 compensation for this. I can appreciate why Mr and Mrs M found this confusing as they were expecting a response from NFU. Though I find £150 to be reasonable compensation in the circumstances.

NFU's decision to outsource claims handling to an agent

As our investigator has explained, it's up to NFU if it decides to outsource aspects of its business to another company. The policy document confirms that NFU's agent administers the claims handling service on NFU's behalf. Although NFU chose to outsource the claims handling to an agent, NFU ultimately remains responsible for that agent's actions. I therefore don't find that NFU did anything wrong here.

My final decision

My final decision is that I don't uphold this complaint, as I'm satisfied that The National Farmers' Union Mutual Insurance Society Limited has already paid reasonable compensation for its errors.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 13 March 2026.

Chantelle Hurn-Ryan
Ombudsman