

complaint

Mr and Mrs A have complained, through their representative Mr L, about a settlement offer from The National Farmers' Union Mutual Insurance Society Limited (NFU) after they made a claim under their home insurance policy. Specifically they've complained that NFU will not agree to the extent of repairs that Mr L feels is appropriate.

background

Mr and Mrs A received a complaint about untreated sewage being discharged into a ditch which is against the law. The letter set out various options for them to comply with the law going forward. One option was replacing their septic tank with a sewage treatment plant.

Mr A arranged for a specialist drainage expert to investigate. They found that a pipe was missing from his septic tank. Mr A made a claim to NFU about the missing pipe. This was an outflow pipe which lets waste water out.

NFU appointed a loss adjuster. The loss adjuster got an estimate for a replacement pipe. Because it knew that Mr A was going to have to upgrade his sewage system to comply with the law, it offered Mr A a cash settlement for the cost of replacing the pipe which he could put towards the cost of those upgrade works.

Mr L said that NFU shouldn't just replace the missing pipe because the sewage system wouldn't comply with current regulations. He thought in order to carry out a permanent and lasting repair NFU should replace the septic tank. NFU said it was only liable to replace the missing pipe and whether the pipe was refitted or not, its drainage expert thought that the tank would carry on discharging raw sewage in a way which doesn't comply with current regulations.

As Mr L on behalf of Mr and Mrs A didn't agree, he brought a complaint to this service on their behalf. Our adjudicator thought it was unreasonable (and went beyond replacing new for old) for NFU to be required to pay for the upgrade Mr L was asking for. However she felt interest should be offered from the date of the claim until the date of payment and that NFU should meet the cost of emptying the septic tank. Although NFU felt that emptying the tank might be considered a maintenance cost it agreed to increase its offer to include the emptying charges. It said it had offered cash on numerous occasions which hadn't been accepted but offered to pay interest for one year from notification of the claim.

As Mr and Mrs A didn't agree, the matter has been referred to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

From the available evidence, there are two main options to bring Mr and Mrs A's sewage system up to a standard which complies with current regulations. One is for the untreated sewage waste to flow out into a series of land drains (soakaway). The other is to install a system to treat the sewage so that the treated sewage can flow out into the ditch.

Mr and Mrs A and their contractor seem to favour the second option. The only debate is about who should bear the cost of this. NFU has already said it doesn't think it has to and so I need to give my view on whether this refusal is fair and reasonable. I believe that it is.

NFU's drainage expert thinks that the pipe might well have been knocked off when the tank was emptied. It might be at the bottom of the tank. I think it's more likely than not that the system was discharging untreated sewage into the ditch before the pipe was damaged. I say that because if the pipe had been missing when the tank was last emptied, then I expect that it would have been pointed out to Mr and Mrs A.

It's clear from correspondence which I've seen that even if the pipe hadn't been missing, Mr and Mrs A would still have needed to take steps to stop the illegal discharge of untreated sewage from their property.

Insurance isn't designed to offer cover for fixing long-standing issues. I don't think it's fair to say that an insurer has to put right a problem that has existed for some time just because insured damage has now occurred. The general principle of an insurance policy is to provide for a like for like replacement or repair. If the existing septic tank needed to be completely replaced, I'd say that it would be necessary for it to be replaced with one that complied with current regulations at the insurer's expense. But that's not the situation here. Mr and Mrs A's septic tank continues to work in the way it was originally designed to. It's just missing a pipe which can be replaced.

I haven't seen any evidence to suggest that replacing the missing pipe is, of itself, an illegal act. Our adjudicator spoke to a building control surveyor in Mr and Mrs A's local authority. He said that no building regulation approval is needed for such work even though it would mean the septic tank discharging illegally.

I appreciate that this will be disappointing for Mr and Mrs A. However this is simply not the sort of thing insurance policies, even those with sections about the insurer complying with regulations, are designed to offer cover for. In my opinion, it would not be fair or reasonable for me to make NFU liable for replacing the whole septic tank. By replacing the missing pipe it will put Mr A back into the position he was in before the damage happened. I don't think this replacement will make their system illegal because it was most probably non-compliant before the damage happened.

I note that NFU has agreed to pay for emptying the septic tank which I think is reasonable since this might have had to be done in order to replace the missing pipe.

With regard to interest I don't think it would be fair to require NFU to pay interest up to the date of settlement since Mr A could have accepted the cash offer earlier without losing the right to complain. I think the offer of one year's simple interest at 8% is fair.

The cash settlement is £676 plus VAT, the cost of emptying the tank is £87.50 plus VAT and so the total including interest as detailed above is £989.50.

my final decision

I uphold this complaint in part. I require The National Farmers' Union Mutual Insurance Society Limited to pay Mr A £989.50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 9 November 2015.

Elizabeth Grant
ombudsman