

complaint

Mr E complained about the amount The National Farmers' Union Mutual Insurance Society Limited ("NFU") paid in settlement of a claim.

background

I issued a provisional decision which set out the background to this complaint together with the reasons why I was minded to uphold it in part. A copy of my provisional decision is attached and forms part of my final decision.

NFU accepted most of my provisional decision. The only part it disagreed with was in respect of the declared value I considered fair. It explained that the changes in sum insured were based on an index provided by the Royal Institute of Chartered Surveyors (RICS). It also provided the various percentage increases over the years.

Mr E outlined a few points he had made previously eg that NFU's representative met him on site before the policy commenced and calculated the values; that the sum insured had increased significantly each year except the final year before the fire. He also disputed the total rebuilding cost that had been calculated and questioned whether he would have to pay for the surveyor that he did not engage.

Before issuing this final decision I wrote to the parties to explain that I was persuaded:

- that NFU had now provided a better explanation why the percentage increase in the declared value was low compared to previous years; and
- that I was minded to base any calculations on the declared value being £284,551.

I also explained that if the thrust of my final decision remained as per my provisional decision, this change would have the effect of reducing the amount I asked NFU to pay Mr E to £13,873.90.

Mr E remained of the view that a 5% increase in the sum insured was fair. He said this was in line with the percentage increase the year after the fire. I did not hear further from NFU.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Given NFU's better explanation as to why the percentage increase in the declared value at the renewal before the fire was lower than in previous years, I am satisfied that the declared value noted on the policy (£284,551) was fair.

For the avoidance of doubt, I have referred to the House Rebuilding Cost Index (which I know some insurers use) on the RICS website and I have noted that the percentage increase was low over the year – in fact the monthly average over the year was well under 1%. I am aware that the figures increased again the following year, but that does not have any bearing on this complaint. It is the declared value at the time of the fire that is important.

Mr E commented on the accuracy of NFU's calculations regarding the total rebuilding costs. This was based on the estimate for rebuilding the damaged property being approximately £166,000 and his opinion that to rebuild the remainder of the premises would cost no more than £90,000.

I am not persuaded to alter my conclusion on this point. I referred in my provisional decision to the lowest tender not being entirely accurate, and I do not have any further comment to make in that respect. Mr E has not provided any evidence to support his contention that the total rebuilding costs would be around £255,000. I can only therefore go by the rebuilding costs provided by NFU as they are the only costs I have been provided with. I therefore remain of the view that a fair figure to use for the total rebuilding cost is £407,190.

I therefore conclude that the buildings were underinsured. This is because the declared value on the policy was £284,551 but the total rebuilding costs were estimated at £407,190. Accordingly, as the declared value represented 69.88% of the total rebuilding cost, NFU was only required to pay Mr E 69.88% of the claim value in settlement of the claim.

NFU's settlement was based on its estimation that it would have cost £234,250 to reinstate the damaged part of the building. NFU has paid Mr E a total of £149,820 in settlement of the claim. The portion of the claim NFU is liable for is £163,693.90. I therefore conclude that NFU should pay Mr E a further £13,873.90.

Finally, I acknowledge Mr E's comment that he has now received an invoice from the surveyor. However, as outlined in my provisional decision, I am unable to comment on this issue as part of this complaint. If, Mr E believes the invoice is something NFU should pay, he will need to complain to NFU in the first instance.

For the reasons outlined above and in my provisional decision, I conclude that NFU was entitled to reduce the claim settlement proportionately due to the fact the buildings were underinsured. However, I conclude that the buildings were not underinsured by as much as NFU calculated.

my final decision

My final decision is that I uphold this complaint in part. I require The National Farmers' Union Mutual Insurance Society Limited to pay Mr E a further £13,873.90 in settlement of his claim, plus interest at a rate of 8% simple per annum (calculated from the date of the claim).

I make no other award against The National Farmers' Union Mutual Insurance Society Limited.

Paul Daniel
ombudsman

C O P Y

PROVISIONAL DECISION

complaint

Mr E complained about the amount The National Farmers' Union Mutual Insurance Society Limited ("NFU") paid in settlement of a claim for fire damage.

background

Mr E lodged a claim under his policy for fire damage to commercial premises. It was agreed that the best way to settle the claim was for a new building to be built. Rebuild estimates were obtained and when they were received NFU considered that the building was underinsured – that is, the declared value on the policy was less than the cost of rebuilding the whole building. NFU therefore informed Mr E that it would reduce the claim settlement in line with the underinsurance.

Mr E complained to NFU. He said that NFU set the declared value when a valuation was undertaken previously by one of its representatives. NFU said it had no record of a valuation or survey being carried out by one of its representatives. It therefore settled the claim on a reduced basis. It also paid Mr E compensation and interest due to the delay in investigating the complaint and settling the claim.

Mr E remained unhappy with the settlement. He maintained that the sum insured had been set by one of NFU's representatives and he disputed NFU's calculations. NFU reviewed the matter and agreed that its calculations were incorrect. It remained of the view that Mr E was significantly underinsured, but not by as much as first thought. It therefore increased the settlement and paid Mr E further compensation.

Our adjudicator concluded that the complaint should not be upheld. In summary, she was not persuaded that a representative of NFU had suggested the sum insured. She also noted that Mr E had been prompted on several occasions to increase the sum insured but he decided against it. In respect of the re-build costs/calculations, as Mr E had not provided any evidence or expert opinion to support his opinion, our adjudicator felt there was insufficient evidence to conclude that they were incorrect.

Mr E rejected our adjudicator's conclusion. He raised or re-iterated several points – including that NFU's representative visited the property and recommended the sum insured; and that the sum insured had increased year on year by approximately 5%, but only by 1.33% the year before the fire.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It states in the policy that if the declared value for insured property was less than the cost of reinstatement at the start of the policy year NFU's liability for any claim would be reduced proportionately. NFU believes it is entitled to rely on this clause to reduce Mr E's claim settlement. This was based on the declared value of the property being £284,551 compared with an estimated rebuilding cost of £442,190.

declared value

According to the policy documents, the declared value of the insured property at the start of the insurance year was £245,000. However, when it reviewed Mr E's claim NFU said this figure was incorrect and that it should have been £284,551. This amendment works in Mr E's favour because if there is any underinsurance it would reduce the level of it.

One of the arguments Mr E raised is that if there is any underinsurance he should not be held responsible for it because the declared value was set by NFU after it inspected the premises.

On the one hand, I do not find Mr E's argument persuasive. This is because it is ultimately his responsibility to ensure that the insured values are correct. However, on the other hand, it could be argued that Mr E acted reasonably *if* he was simply following NFU's advice as to how much the premises should be insured for. This is one of the major areas of dispute in this case.

It is not disputed that NFU's representatives regularly visited the site – its agent admits this occurred every year shortly before the policy was due to be renewed. The issue is whether any representative set the declared value or advised Mr E that it should be set at the figure it was.

Mr E insists that NFU's representatives visited the site whilst he was there and made various recommendations. In contrast, NFU says that it has no record of anyone attending to value the property. Furthermore, in respect of any advice NFU gave to Mr E about the declared value, NFU says it consistently suggested that he increase it but that Mr E refused to do so.

I am not persuaded that Mr E has been consistent in his recollection of events regarding when the NFU representative valued the property. Initially enquiries centred on a supposed visit *four to five* years before the fire – Mr E's statement referred to somebody attending the premises and measuring the buildings; and that when he discussed this with NFU's agent he was told that someone had been sent to value/assess the property. However, latterly, Mr E has referred to representatives valuing the property when the policy first commenced (which, to my knowledge, was approximately *nine* years before the fire). In my view this lack of consistency regarding when NFU's representatives allegedly valued the property lessens the persuasiveness of Mr E's testimony.

Having considered all the evidence presented, I am not persuaded that NFU or any of its representatives valued the property and/or advised Mr E that it should be insured for the amount it was. On the contrary, I consider it most likely that NFU informed Mr E that the value noted on the property was too low.

Another argument Mr E raised is that the declared value should have been higher because it only increased by a small percentage due to index-linking (ie the adjustment made each year to keep the declared value in line with building costs) compared to previous years. On the face of it, I think Mr E has a reasonable argument.

NFU explained to me why the percentage increase in the year prior to the claim was significantly lower than in previous years. However, I could not understand its explanation. Accordingly, I cannot be persuaded that the adjustment to the declared value in the year prior to the claim was fair. I therefore consider it fair and reasonable for any underinsurance calculations to be based on a declared value of £298,779 (ie £284,551 plus 5%).

estimated total rebuilding cost

I am aware that Mr E disputed the loss adjuster's measurements; however, I have not seen any evidence which persuades me they were inaccurate.

NFU based its claim settlement on its calculation that the cost to rebuild the total building (ie incorporating all the individual units) was £442,190 plus VAT.

Based on the loss adjuster's measurements, I calculate the area of the total building to be 630 square metres. However, in its response to Mr E's complaint, NFU referred to the total area of the building being 622 square metres (I think it made an error when calculating the area of one of the units). As the smaller area works in Mr E's favour – because it reduces the estimated rebuilding cost – I consider it fair to use NFU's figure.

Using the rebuilding costs provided by NFU (which are the only costs I have been provided with), which made allowances for the fact that the units were of different construction and had varying heights, I have calculated the estimated cost to rebuild the total building would be £466,988. Accordingly, I do not consider NFU's figure inherently unfair or unreasonable as a starting point.

Mr E raised an issue about the costs for rebuilding the party wall being included in the total rebuilding costs when they should not have been. I asked NFU to explain how these costs had been taken into account and/or excluded from the calculations. It simply replied to say that it had been taken into consideration when calculating the underinsurance. I cannot therefore deduce precisely how the party wall costs have been taken into account.

Accordingly, for the purpose of calculating any underinsurance I think it is fair to deduct £35,000 (which I understand was the cost of the party wall, excluding VAT) from the total rebuilding costs.

This therefore reduces the total rebuilding cost to £407,190 (ie £442,190 less £35,000).

underinsurance

I conclude that the buildings were underinsured. This is because the declared value was £298,779 but the total rebuilding costs were estimated at £407,190.

So, as the declared value represented 73.38% of the total rebuilding costs, NFU was only required to pay Mr E 73.38% of the claim value in settlement of the claim.

claim settlement

NFU based its claim settlement on its estimation that it would have cost £234,250 to reinstate the damaged part of the building. Mr E queried this cost as the lowest tender obtained for the work was just over £166,000. That was indeed the case; however the sundry costs involved in reinstating the damage (eg surveyor's fees) need to be included in the total claim settlement. And, in any event, the higher the reinstatement costs the higher the settlement to be paid to Mr E.

NFU has paid Mr E a total of £149,820 in settlement of the claim¹. The portion of the claim NFU is liable for is £171,892.65 (£234,250 x 73.38%). Accordingly, I conclude that NFU should pay Mr E a further £22,072.65.

sundry issue

In his response to our adjudicator Mr E raised an issue about a dispute over which party appointed the surveyor. I assume this dispute has arisen because it will determine who is responsible for paying the surveyor's fees.

I am unable to comment on this issue as part of this complaint. This is because it did not form part of the complaint that Mr E brought to us and, to my knowledge, he has not formally complained to NFU about it. Should Mr E wish to continue with a complaint in this respect he will need to complain to NFU in the first instance. And if NFU does not resolve the matter to his satisfaction Mr E will be entitled to lodge a new complaint with the Financial Ombudsman Service.

summary

For the reasons outlined above, I conclude that NFU was entitled to reduce the claim settlement proportionately due to the fact the buildings were underinsured. However, I conclude that the buildings were not underinsured by as much as NFU calculated.

¹ NFU has actually paid Mr E a total of £151,450; but £1,630 represented payments for interest and compensation.

my provisional decision

My provisional decision is that I uphold this complaint in part. I am minded to require The National Farmers' Union Mutual Insurance Society Limited to pay Mr E a further £22,072.65 in settlement of his claim, plus interest at a rate of 8% simple per annum (calculated from the date of the claim).

I am not minded to make any other award against The National Farmers' Union Mutual Insurance Society Limited.

Paul Daniel
ombudsman