

## complaint

Mr R's complaint relates to a claim made under his late mother's buildings insurance policy held with The National Farmers' Union Mutual Insurance Society Limited (hereafter referred to as 'NFU'). Mr R is the executor of his late mother's estate.

This complaint was originally referred to this service in 2008, at which time Mr R's mother was the complainant. The information contained with the complaint form submitted in 2008 detailed the complaint as follows:

- The sum assured on the property being assessed as being inadequate in 2003 when it was set by NFU in either 1983 following the initial claim for subsidence to the property, or in 1999 following the death of Mr R's father.
- Despite the 1995, 2003 and 2006 claims for subsidence being accepted by NFU as extensions of the 1983 claim, the no claims discount was removed from the policy and the insurance policy was loaded by 50% due to an excessive number of claims being made.
- The level of premium charged from 1 January 2007, even though there was no possibility of any additional risk associated with the cover.
- In relation to the 2003 claim:
  - NFU failed to obtain sufficient quotes for repairs
  - NFU failed to obtain costings for demolishing the property and rebuilding it on a piled raft
  - NFU failed to place Mr R's mother back in her pre-loss position
- In relation to the 2006 claim;
  - unnecessary delays
  - NFU recommended that the policyholder accepted a cash settlement of £117,500 (based on diminution in value) in the knowledge that it was not sufficient to demolish and rebuild the property
  - having decided to settle the claim on the basis of diminution in value, NFU refused to consider or discuss repairing/rebuilding the property
  - NFU refused to meet or negotiate with the policyholder's agents
  - the settlement cheque was physically shown to Mr R in November 2007, but it was not until March 2008 that it was offered to Mr R.
  - NFU did not communicate adequately with Mr R and the solicitors involved and ignored letters and requests for information and documents
- Mr R is not satisfied with the complaint response relating to the issue raised about the sum assured on the policy being inadequate.

During the period that the complaint was with this service Mr R (and his wife, on his behalf) also raised and clarified the following additional issues:

- They were unhappy with the values assessed by one of the estate agents that had been asked to provide NFU with its opinion of the 2007 value of the property and the value it would be worth in a repaired state. They believe that this estate agent had calculated the value using the repair costs provided by NFU, which were too low.
- Mr R considered that interest should be paid on the settlement sum from the date the cheque was drawn by NFU in November 2007 to the date that it was sent to him on 17 March 2008. In addition, interest should also be paid from the date that the cheque was sent to him to the date that NFU confirmed that it could be cashed without prejudice.
- He was unhappy that whilst NFU paid the estate agents for providing information about the value of the property, it did not pay his wife for providing information, in particular regarding the costs of suitable alternative accommodation.
- The fees incurred in seeking assistance from solicitors should be paid by NFU as its loss adjuster advised Mr R's mother to seek advice from a solicitor to decide whether she wanted the property repaired or to settle on the basis of diminution in value.

## **background**

In 1983 a claim was made for subsidence damage to the property. At that time the left hand flat roofed extension to the property was underpinned. It was identified that the property was underinsured at the time, which Mr R's parents were informed of and they increased the policy cover accordingly. However, it meant that they had to contribute to the cost of the repairs to the property.

Subsidence cover was removed from the policy following the claim, but subsequently reinstated in 1991 following Mr R's parents providing the guarantee that the repairing builder had given them for the works.

In September 1995 a further claim for subsidence was made. The initial claim notes state that *'the main house structure is in order, a utility/washroom appears to have developed a crack in the floor and up the walls over the ceiling and down again, approximately ¼ inch wide.'* A firm of loss adjusters was appointed to assess the damage to Mr R's mother's property. This determined that the movement to the property was predominantly to the right hand projection of the house, which was rotating and pulling away from the main house.

It was determined that the cause of the damage was due to the clay beneath the foundations of the property shrinking due to vegetation and dry weather. There were also problems with the drainage that ran beneath the right hand projection of the property, which may have been contributing to the movement. Mr R's parents were asked to remove the vegetation that was contributing to the problem and NFU completed repairs to the drains. Following a period of monitoring to establish that the property was stable, super-structural repairs were completed in 1997.

It was again identified that the property was underinsured at the time of the 1995 claim, but this was put down to the indexation on the policy not keeping pace with the increasing value of the property. As such, NFU decided that it would take no action regarding the underinsurance.

NFU's records indicate that in 2000 Mr R's wife contacted NFU regarding the sums assured on the policy. Following this, the contents sum assured was increased, but the buildings sum assured was not.

Mr R has stated that NFU told his wife that the buildings sum assured was alright because they were talking about rebuild costs, which would exclude the cost of land, so the cover was more than adequate; there was no question of underinsurance.

In 2003 further cracking occurred and NFU identified that due to vegetative induced clay shrinkage the main building was moving; this caused cracking in the utility area of the property. It was also established that the fact that the main building was moving, but the extension was not, had caused cracking at the junction between those parts of the structure. NFU followed its expert's advice and completed vegetation works and, following a period of monitoring, again completed super-structural works, along with the introduction of more effective movement joints at the junction of the main house and the extension.

As the damage was determined to be from the same cause as the 1995 claim, NFU determined the 2003 claim was an extension of the 1995 claim and did not charge a further excess.

Mr R's wife confirmed to NFU in March 2007 that the property had been placed for sale as in early 2005 Mr R's mother wanted to move to a smaller property closer to her family. However, due to the subsidence the property did not sell very quickly and the offer they did accept fell through due to the collapse of the chain behind the purchase. Due to the reoccurrence of subsidence the property was removed from the market in October 2006. A further claim was made to NFU for subsidence to the property.

Following the claim being made it was identified that further movement had occurred in the front right hand area of the property. The movement was thought to have been caused/contributed to by a shrub beside the front door. There was also further damage at the junction between the underpinned extension and the main structure.

The engineer recommended that NFU consider underpinning, given that it was the fourth bout of subsidence that the property had suffered.

Given that the damage was in the same area of the property as previous damage, NFU decided to treat the claim as a continuation of the previous claim, rather than a new claim. As it had determined that the previous claim had been a continuation of the claim before, this would mean that both the 2003 and 2006 claims were to be considered to be a continuation of the 1995 claim.

In March 2007 a complaint was raised on behalf of Mr R's mother as she was not being kept informed regarding the progress of the claim. The loss adjuster responded to this complaint on behalf of NFU and apologised for the delay that had occurred and confirmed that a course of action of how to progress the claim had been made and that this would be communicated in writing the following week. It also confirmed that the proposals had already been discussed with Mr R's mother.

Mr R has pointed out that at no point did his mother have any discussions with the loss adjuster.

As such, the loss adjuster put forward the options of either repair of the property, with alternative accommodation provided if the property became uninhabitable, or settlement on the basis of loss in value of the property if it was sold in an unrepaired condition (assuming that it was economic compared to the repair costs). It was confirmed that if the claim was settled as loss in value, the land movement sections of the policy would be excluded from the policy at renewal. It was asked of Mr R's mother that she consider the options and confirm which of them she would prefer. The loss adjuster suggested that Mr R's mother may wish to seek advice from either the Citizens Advice Bureau or a solicitor.

An estimate for the underpinning of the property was obtained in April 2007, which confirmed that the works would take nine weeks and would cost £56,458 plus VAT.

Two valuation reports were obtained from local estate agents in order to establish the likely loss in value if the property was sold in an unrepaired state, albeit three estate agents were asked to provide this information. Estate agent one completed its valuation on 30 April 2007 and assessed that the value of the property in its then current state was worth £165,000. It estimated that if the repairs were completed (which it assumed would cost in the region of £80,000) the property would be worth £260,000.

Estate agent two did not provide the information requested and so a further estate agent was approached. The valuation report from estate agent three detailed that it considered that the value of the property in its damaged condition was £100,000 and its estimate of the value of the property if it were repaired was £240,000.

In its letter of early September 2007, it explained to Mr R's mother that the loss adjuster would be contacting her shortly to discuss the options available to her and that she did not need to make an immediate decision. It was also confirmed that if she decided to opt for settlement of the claim on the basis of loss in market value, the buildings insurance would cease from the date of settlement of the claim.

In late September 2007 the loss adjuster wrote to Mr R confirming that it was likely that the repair costs for the property would be in the region of £140,000. However, it was possible that once the repairs commenced the costs could increase and the limit of NFU's liability if this occurred would be the sum assured on the policy at that time of £152,315.

However, given that Mr R's mother wanted to sell the property, a sensible option would be not to go through the disruption of repairs before the sale, but rather sell the property and settle the claim on the basis of the actual loss in value that was suffered. The loss adjuster proposed that the 'repaired' value of the property for this purpose should be the average of the two estate agents estimates; £250,000. It was also confirmed that should the claim be settled on the basis of loss of value, the excess would not be payable.

At this time the loss adjuster mistakenly believed that Mr R's mother was to move into a nursing home. In that mistaken belief, the offer of NFU immediately settling £15,000 of the loss in value was made to enable her to move. It was confirmed that this sum would be deducted from the final settlement.

The matter of the claim settlement was discussed further during October 2007, and NFU offered to settle the matter for £150,000. However, Mr R did not accept this offer on his mother's behalf, as he did not consider that it was reasonable that NFU would cease to insure the property, nor did he accept that the most that could be paid was the sum assured of £152,315. Mr R asked that a meeting be arranged with a senior member of staff at NFU and the loss adjusters to discuss the entire situation.

Further correspondence was exchanged and it was confirmed to Mr R's wife in early October 2007 that NFU considered that a meeting was not necessary and that it should be possible to deal with the claim settlement by telephone.

Mr R raised concerns with NFU regarding the handling of the claim and the settlement offered, which was received by NFU on 16 October 2007. NFU considered that the concerns Mr R raised should be dealt with as a formal complaint. However, a few days later, Mr R confirmed that he did not consider that these matters should be dealt with as a complaint at that point. He reiterated his request for a face to face meeting with a senior member of staff at NFU who had the authority to make an agreement in that meeting to resolve the claim.

On 1 November 2007 a telephone conversation took place between NFU and Mr R, in which it explained why it had dealt with his concerns as a complaint. Following this Mr R confirmed that he wanted the claim resolved and would then make a complaint; in light of this, NFU confirmed that it would continue to deal with the matters raised as a complaint. Mr R explained that he wanted a face to face meeting to resolve the claim as he was not well and not good on the telephone. Mr R raised various questions, but he did not wish to discuss these matters at that time. NFU offered to send someone to meet with him to explain the basis of the offer it had made and asked what other areas of concern he had, to ensure that the appropriate person was sent to the meeting; Mr R did not wish to discuss these concerns on the telephone and reiterated that he wanted a meeting. Mr R has also stated that he was told that the meeting could only be arranged for someone to explain the systems regarding subsidence and there would be no capacity for negotiation of the claim settlement.

Mr R wrote to NFU following the above telephone conversation to complain that the call had not been made simply to arrange a face to face meeting. He also commented that the NFU complaint handler should not be dealing with his concerns, as the matters should be considered by an independent arbiter.

Prior to the meeting with NFU taking place, the sum assured on the policy was calculated to November 2007 – that being the sum assured at the previous renewal plus the indexation over the period it had been in force since renewal. This was assessed as £158,560 and the member of NFU staff who attended the meeting was to take a cheque for this amount to the meeting in the event that agreement could be reached within the meeting.

A meeting took place between Mr R and NFU's representatives in November 2007. An agreement as to the settlement of the claim was not reached, and so the cheque that had been drawn by NFU for the full sum assured was not given to Mr R.

Mr R has stated that he does not consider that this was a meeting, as the representative from NFU did not have the authority to negotiate the claim settlement. He has stated that there was never any attempt by NFU to come to an agreement on the settlement of the claim and, whilst he was shown the cheque, the representative confirmed that he only had the authority to agree a small sum for Mr R's expenses.

On 27 February 2008 NFU wrote to Mr R with its response to his complaint. It explained the options available for it to settle complaints and the costs associated with the different options. It went on to explain how it had decided the offer that was appropriate. It enclosed the cheque it had drawn in November 2007 for the settlement amount of £158,560. Referral rights to this service were provided.

Mr R did not accept NFU's position and raised concerns regarding the handling of his complaint and questioned various items of information contained within its final response letter. He also expressed dissatisfaction at the lack of detail relating to the service issues that he had raised and that there was no comment on what NFU was going to do about the poor service it had acknowledged.

Mr R did not accept the settlement cheque and reiterated his concerns over the settlement offers that had been offered during the course of the claim and requested that it be settled at £205,000. He stated that if NFU was not willing to settle the claim at this amount he insisted that it honour its promise to have a '*proper face to face meeting.*' The meeting was to have an agenda to include negotiating a mutually agreeable settlement, including all the matters he raised in his response letter, his previous letters and the discussions that had taken place. Mr R confirmed that he would not enter into any further written correspondence with NFU, nor would he speak to it by telephone. He also confirmed that he did not want the Financial Ombudsman Service mentioned again, as he had not made a formal complaint.

In March 2008 NFU responded to Mr R's letter and confirmed that it was not willing to increase its offer of settlement as it considered it was fair and reasonable. It returned the cheque for the settlement amount and confirmed that in cashing the cheque Mr R was not prejudicing his mother's position and that the matter could still be referred to this service.

Mr R's mother's solicitor responded to NFU in April 2008. It requested information regarding the policy, the claims and the claim handling.

In May 2008 the solicitor again wrote to NFU and stated that the cheque would be cashed on 8 May 2008 on the basis that it would not be accepted as full and final settlement of the claim, would not prejudice its client's position to pursue the matter through this service or the courts and that they reserved the right to claim interest on that amount and any additional sums owed.

It was also confirmed that the cheque would be banked '*without prejudice to our client's right to seek alternative remedies in relation to the above policy. Without prejudice to the generality of the foregoing this includes the right to seek repair and/or rebuilding of the property.*'

A further letter was written to NFU by the solicitors at the beginning of July 2008, enclosing a copy of its April letter and chasing a response to it. NFU confirmed in response that it had not received the April letter and provided a copy of the policy wording. It also confirmed that it had responded to the May letter and confirmed that it had informed the solicitors that it stood by its decision and that Mr R [as his mother's representative] would need to refer the matter to this service within six months of its letter of 17 March 2008. It confirmed that it would not enter into further correspondence regarding the matter.

The solicitor responded to NFU's letter and reiterated that it required copies of the documentation requested. It also stated that it did not understand how NFU could issue its senior management decision letter in relation to the complaint given that further issues had been raised.

Further correspondence was exchanged and in August 2008 Mr R's solicitor requested that a replacement cheque be issued as the one held by its clients had expired. It also chased a response to issues raised in its April letter. The replacement cheque was cashed into Mr R's bank account on 14 August 2008.

Further correspondence was exchanged between NFU and Mr R's solicitor. Some copy correspondence was provided to the solicitors, but it was not satisfied with the scope of the information provided.

The complaint was referred to this service in September 2008.

During the course of this service's investigation into Mr R's complaint, NFU provided the following information regarding the premium alterations associated with the insurance policy:

- At the December 2005 renewal a claims experience loading was applied to the policy due to the 2003 subsidence claim and a theft claim that was made the previous policy year. This was added as two claims had been made in the previous three years.
- At the December 2006 renewal the claims experience loading remained in place and NFU increased the excess for subsidence claims. However, as there had been no new claims made in the previous year, a no claims discount was applied.
- At the December 2007 renewal the claims experience loading remained in place. Due to no claims being made in the previous year, a no claims discount was applied. As the 2006 claim was (as far as it was concerned) in the process of being settled, subsidence cover was removed from the policy.
- At the December 2008 renewal the claims experience loading remained in place and a no claims discount was applied to the policy. Following a query regarding the premium, a further year of no claims discount was applied to the policy.
- At the December 2009 renewal the premium increased due to the property being unoccupied.

I considered the merits of Mr R's complaint in my provisional decision in November 2013, the findings of which I have detailed below:

*sum assured associated with the insurance policy*

*The evidence available in this case shows that at the time of the first claim for subsidence to the living-room extension the sum assured was determined to be too low. There is no information available as to how this sum assured was selected, but it seems likely that it was initially set by Mr R's father when the policy was arranged, and increased annually due to indexing. I have seen no evidence that NFU was responsible for the underinsurance in 1983 or that Mr R's parents raised any concerns about the matter at that time.*

*Following being made aware of the underinsurance associated with the policy, Mr R's father increased the sum assured to the level recommended. However, by the time of the second claim in 1995 the property was again considered to be underinsured and this was deemed to be due to the indexation not keeping pace with the increase in the cost of rebuilding the property. Given that the indexation is designed to take account of the increases in the costs associated with the rebuilding of a property, NFU accepted liability for the underinsurance and covered all of the costs associated with the claim.*

*However, NFU did make Mr R and his mother aware of the underinsurance. It was at this time Mr R's mother's responsibility to ensure that the sum assured on the policy was increased to the correct level; NFU could not force the policyholder to increase the sum assured in the circumstances. Whilst Mr R's wife (on behalf of his mother) did arrange for the contents sum assured to be increased following the claim being settled, no action was taken to increase the buildings sum assured. Therefore, the property remained underinsured, for which I do not consider that NFU can be held responsible.*

*I have commented that NFU was not in a position to force Mr R's mother to increase the sum assured under the policy. Usually, in a situation where the insurer is aware that the sum assured is insufficient, the insurer would simply refuse to continue to insure the property unless the sum assured were increased. However, because Mr R's mother's property had suffered from subsidence, NFU was not in a position to take such action. Properties that have suffered from subsidence are very difficult to obtain new insurance cover for and as such, the insurance industry has agreed to give continuing cover for such properties. Therefore, NFU was not in a position to remove cover from Mr R's mother.*

*However, even though the property was underinsured at the time of the 2003 claim, NFU did not seek to penalise Mr R's mother for this fact when it settled the claim. Furthermore, it appears that by the time of the 2006 claim, the indexation had 'caught-up' with the cost of rebuilding the property in its existing form.*

*Mr R has indicated that he does not consider that the sum assured associated with the policy was insufficient as the property would need to be rebuilt on a piled raft and the sum assured was not sufficient to do this. Whilst this may well be the case, it was not determined for certain until 2006 that the property needed to have significantly deeper foundations than it had. Therefore, until that determination was made, ie until after the claim had been made and investigated, the sum assured need only to have been sufficient to rebuild the property as it was, not including significantly more expensive foundations.*

*premium associated with the policy*

*Having reviewed the entire file relating to the four claims that were made, I am satisfied that only two claims should have been recorded against the policy. The claims in 1983 and 1995 related to the same generic cause of subsidence, ie clay shrinkage, but the areas of the property affected were different. As such, it is not unreasonable for NFU to have recorded separate claims for these two incidents.*

*However, as the 2003 and 2006 damage affected the same area of the building as the 1995 claim, NFU accepted that these incidents should not be considered as new claims. This is an entirely reasonable view for NFU to have taken.*

*In light of this, NFU should not have registered a claim against the policy in the 2002/2003 policy year. Therefore, its decision to load the policy premiums at the December 2005 renewal, based on there having been two claims in three years was incorrect. Furthermore, if the no claims discount was removed from the policy following the 2003 subsidence claim, this should not have been removed.*



*In light of the information provided by NFU regarding the policy premiums, I must uphold Mr R's concerns regarding the premiums charged by NFU. NFU must, therefore, recalculate the premium that should have been paid to the policy from the 2003 renewal for the remaining policy years, as though a subsidence claim was not made in the previous policy year. This must take into account the no claims discount and any loadings that were applied. When doing so, NFU must also discount any record of a claim for subsidence being made in 2006.*

*If the policy premiums are established as being higher than they should have been, NFU should refund the difference in premium, plus interest from the date the premium was paid to the date of settlement. Interest is to be paid at 8% simple per annum.*

*Mr R has raised a concern specifically regarding the premium charged from January 2007 (ie the December 2006 renewal). The premium at this point actually decreased from the previous year due to the reinstatement of the no claims discount and an increase to the subsidence excess. I can see no issue with the premium paid in relation to this premium, other than the loading and no claims discount issues already addressed above.*

*I note however that at the December 2007 renewal the subsidence cover was removed from the policy, but that the premium increased slightly. A policyholder might in the circumstances consider that the premium would reduce when the breadth of cover is reduced. Unfortunately, this is often not the case as most insurers offer cover on a generic premium for basic cover, irrespective of whether all areas of standard cover is included.*

#### *NFU's liability under the policy*

*Mr R has stated on several occasions that NFU has not provided him or his solicitor with a copy of the original policy document and has acknowledged that this document does not exist. If by the original policy document Mr R is referring to the policy document that applied to the policy at the time the policy was arranged or that from the time of the first subsidence claim, I do not find it surprising that these documents are no longer available.*

*However, the fact that these documents are not available does not mean that the claims made under the policy cannot be assessed correctly.*

*Technically, each time the policy renewed, a 'new' policy came into force with its own associated terms, conditions and limits. It is under the terms, conditions and limits in place at the time the claim is made that the claim must be assessed under. Whilst, in situations such as this, where the 1995, 2003 and 2006 occurrences are being considered as the same claim, it could be argued that the terms etc associated with the policy at the time of the 1995 claim should be used to consider all of the claims, that would materially disadvantage the policyholder. If all of the events were to be considered under the terms of the 1995 policy, the sum assured associated with that policy would be the one that would limit the settlement of the claim.*

*The policy terms and conditions that apply to the settlement of the 2006 claim state:*

*'How **we** will settle **your** claim*

***We** will settle claims by paying the cost of repairing or replacing **your** buildings.*

*...*

*If **you** do not repair or replace **your buildings**, **we** will pay the loss in market value or the cost of repair or replacement, whichever is less.*

***We** may, at **our** option, replace **your buildings** or arrange for repairs to be carried out.*

*The most **we** will pay for **damage** to your **buildings** is the sum insured for **buildings** shown in your **schedule** and any extra amount for **index linking**. The amount **we** pay will include costs for:*

- *Clearing the site (removing debris, demolition, shoring or propping up);*
- *Professional fees (architects, surveyors and legal fees); and*
- *Meeting building regulations requirements.*

*Whilst Mr R disagrees with this, it is clear from the terms and conditions that the amount payable under any one claim is the sum assured associated with the policy. Although he has referred to an 'aggregator' clause, detailing the maximum pay out for any one cause of damage being £500,000 this does not apply to each settlement, but the total settlement.*

*In simple terms, if the amount paid out for the damage assessment and repairs for the 1995 and 2003 damage had in total cost £450,000, NFU would only have been liable to have paid out a further £50,000 for the 2006 damage. This would be irrespective of the sum insured under the policy at the time of the 2006 damage. It is not the greater of the two sums that would be paid under a claim, the maximum paid would be the sum insured applicable at that point.*

*Following investigations of the 2006 damage to the property, NFU decided that there were two options that were viable for settling the claim; repairing the property or settling on the basis of the property not being repaired and paying reduction in market value. Given that NFU had been told that Mr R's mother wanted to move home into a property that was smaller and closer to her family, it offered her the choice of how she wanted the claim to be settled.*

*This was a relatively simple decision to make – did she want to sell the property immediately and be compensated for the reduced value, or did she want to go through the repair process before she arranged to sell the property. Having carefully reviewed all of the evidence available to me from both parties to this complaint, I have been unable to find any evidence that Mr R or his mother made a decision as to how the claim was to be settled.*

*An insurer cannot be expected to wait indefinitely for a policyholder to give an indication of their preference for settlement of a claim. As such, it remained at NFU's discretion as to how to settle the claim. In light of the repeated representations that Mr R's mother wanted to move and that there was some urgency in settling the claim due to her age, I do not consider that NFU's decision to settle on reduction in market value to move the matter forward was inappropriate in the circumstances.*

*Having made that decision, I do not consider that it was under any obligation to continue to backtrack on that decision and open up the option of repairing the property again.*

*Mr R is unhappy about the estimate from one of the estate agents and believes that the estate agent had calculated the value using incorrect repair costs. NFU requested the same information from both estate agents and I do not consider the fact that the results differed slightly to be surprising; whilst they are professionals in the area concerned, the requested information would be considered to be an informed estimate. Therefore, whilst Mr R has concerns about the figures provided by one of the estate agents, I do not consider it was unreasonable or inappropriate for NFU to rely on the professional opinions of the two estate agents when it made its initial offer. I would also comment that it would be normal practice in such circumstances for an average of the two sets of numbers to be used when calculating the offer.*

*Furthermore, Mr R has concerns that the values provided were based on the property being repaired, but having a history of subsidence, rather than a property that had not suffered from subsidence. He does not consider that this placed his mother in her pre-loss position. It was entirely appropriate for NFU to ask for and base its settlement on a 'repaired' value for the property. Had the property been repaired, NFU would have placed Mr R's mother in the position of having a structurally sound property – the position she was in prior to the subsidence. The fact that she might receive a lower value for the property when it was sold would not be NFU's responsibility, as it was not responsible for the subsidence occurring or that there is a stigma associated with properties that had subsided.*

*I note that Mr R has raised the issue of NFU not exploring the option of demolishing the property and rebuilding it on suitable foundations. If a repair of the property was not possible, I would have expected NFU to look into the option of 'replacing' the property under the terms and conditions of the policy. However, the property could be repaired and, therefore, I do not consider that it was required to look into this option under the terms and conditions of the policy.*

*Having determined that the most appropriate way to settle the claim was on a reduction in market value due to Mr R's mother's circumstances, as I have said above, it was entirely reasonable that it initially offered to settle the claim on the basis of the average of the two estimates. It then offered to increase the settlement to the greater of the two losses identified by the estate agents. I consider that this was the maximum of NFU's liability - £140,000. NFU ultimately paid out the full sum assured associated with the policy and as such, I am unable to find that it is due to make any further payment under the terms of the policy.*

#### *claim handling*

*Mr R has raised numerous issues regarding the handling of the claims and I will address some of the specific concerns he raised at this point, as well as the general handling of the matter.*

*Mr R has stated that he considers that NFU failed to obtain sufficient quotes for the repairs completed following the 2003 claim. NFU chose to repair the property in 2003; as such, NFU did not need to obtain numerous quotes, but simply to arrange a contractor to complete the works. I am unable to find that NFU acted inappropriately in this regard.*

*Mr R was clearly unhappy throughout the handling of the 2006 claim that NFU would not sit down and enter into face to face negotiations over how much it would pay out under the claim. I believe that the different view on this matter from the two sides comes about from a misunderstanding of how insurance policies are administered. When a claim is made the insurer will assess what its liability is under the terms of the policy; this will be a defined sum.*

*As such, whilst there will usually be some room for slight differences of opinion, there would not be sufficient room for the type of negotiation Mr R clearly wanted. As such, I do not consider that it was inappropriate for NFU not to arrange such a meeting and thereby mislead Mr R into believing that such a negotiation was possible.*

*In relation to the matter of the settlement cheque being shown to Mr R in November 2007, but not given to him, I am not persuaded that the business acted inappropriately. The evidence I have seen indicates that Mr R was not willing to settle the claim at the sum offered on the cheque. As such, it was not unreasonable for NFU's representative not to leave the cheque with Mr R.*

*Mr R has stated that NFU did not communicate well with his solicitors. I must agree that there were gaps in the information NFU provided the solicitors in relation to what it appears to have wanted. However, much of the information the solicitors wanted could have been provided by its clients and the requests were so wide reaching I am not persuaded that the breadth of the requests was entirely reasonable.*

*Mr R has complained that NFU did not pay his wife for obtaining information about alternative accommodation for his mother. Firstly, I can see no evidence that Mr R's wife asked for such a payment at the time and it would be unusual for a family member to be paid to provide relatively minor assistance with an elderly relative's claim. As such, I am not minded to make an award in this regard.*

*NFU has accepted that the 2006 claim could have been dealt with better. Having reviewed the evidence, I would agree that there were significant delays in settling the claim. However, I am not minded to find that NFU is entirely responsible for the delays; some were caused by third parties being unreliable, for example in the case of estate agent two. In addition, I consider that Mr R contributed to the problems and delays as well as NFU.*

*interest on settlement cheque*

*Where there has been a delay in settlement of a claim, this service would usually award interest on the settlement amount. In this case, this would be from the time NFU could have paid Mr R's mother the claim settlement in November 2007 to the date it informed her that she could cash the cheque without it affecting her rights. This was in NFU's letter in March 2008.*

*solicitors' fees*

*I have considered the matter of whether NFU should be liable for any legal fees Mr R's mother may have incurred during the course of her claim and subsequently during the period of the complaint.*

*Whilst NFU's loss adjuster did suggest that Mr R's mother may wish to seek advice on which of the options available to her she would prefer to have her claim settled on, it did not specifically recommend that she consult a solicitor rather than seeking other cost free options.*

*Furthermore, I do not consider that NFU should reasonably be held responsible for costs associated with a consumer seeking advice at such a stage of the claim process. In addition, given Mr R's involvement in the claim on his mother's behalf, I am not persuaded that a legal opinion was necessary at that time.*

*In relation to the costs that were incurred in seeking confirmation that the settlement cheque could be cashed without prejudicing Mr R's mother's position, I do not consider that these services were necessary as NFU had already confirmed that this was the position prior to the solicitor's involvement. Nor do I consider that Mr R's mother, given the assistance Mr R was providing her, required a solicitor's assistance in preparing and making her complaint to this service.*

*I do not consider that any award is merited in relation to the costs incurred in seeking assistance from solicitors in this case.*

*In summary, I consider that there are two areas in which NFU could be asked to make further settlement in relation to the 2006 claim; interest on the settlement between November 2007 and March 2008 and poor claim handling.*

*However, as I have mentioned above, NFU has already paid out £18,650 more than it was required to under the policy terms and conditions in order to attempt to achieve resolution of the claim. I consider that this additional payment should be taken into consideration when determining whether a further compensation payment should be made. I am satisfied that the interest and any distress or inconvenience awards I could reasonably make in this case would not amount to the sum already paid. Therefore, I do not propose to make a further award in this case.*

*My provisional decision is that I am minded to partially uphold this complaint. In settlement of the complaint The National Farmers' Union Mutual Insurance Society Limited should recalculate the premium associated with the policy as detailed above, and refund any sums necessary along with interest at 8% simple per annum (less tax if appropriate). I make no further award.*

#### responses to my provisional decision

NFU confirmed that it had received my provisional decision and that it did not have any further submissions it wished to be considered.

Mr R responded to my provisional decision. Whilst I will only provide a brief summary of the key points here, I have carefully read the entire submission and attachments. Mr R said:

- He believes that NFU has not presented the true facts of the case to this service.
- He accepts that the choice of how to settle the claim was a simple one; did his mother want to sell the property immediately or go through the process of repairing it. However, he is surprised at my comment that a decision was not made – it could not be until figures were established for the cost of the repairs and the amount that would be payable under the loss in market value option had been established. He had also raised another option for settlement, that of demolishing the property and completely rebuilding it. He was never told that there was a deadline for the decision being made or that NFU had reneged on its promise and had taken back the right to decide how to settle the claim.
- He, his sister and his mother had discussed the options available for the way forward for settling the claim and it was never a realistic option for the property to be repaired, given the disruption that it would cause to his mother. Therefore, my comment that his mother wanted to sell the property was incorrect.

- He does not consider that the visit from the NFU representative in November 2007 was a meeting as it was made clear before it occurred that the individual who was attending would not be in a position to negotiate. He believes that as the option on how to settle the claim was given to his mother, there was room to negotiate the settlement.
- He was never given the option to accept the cheque for the full sum assured during the visit in November 2007. Had he been, he would have told his mother to accept the money.
- He was under the impression that the original adjudicator at this service had determined that all of the claims were extensions of the 1983 claim and that the need to rebuild the property was known long before 2006. At the very least, NFU should have realised the entire property needed underpinning at the time of the 2003 claim;
- The property was never underinsured. Whilst it was confirmed by the loss adjuster in both 2003 and 2006 that the property was underinsured, NFU had not agreed.
- He believes that the assistance of a solicitor was needed as NFU refused to correspond with him as it was dealing with his correspondence as a complaint. Whilst he agrees that the solicitor was not very effective, he maintained that its involvement was necessary and seeks a contribution to the legal costs incurred;
- He does not agree that NFU's maximum liability is as I detailed in my provisional decision – there was a further potential liability of 25% of the sum assured in providing respite care for his mother. He is also unhappy that I said that because it had paid more than its maximum liability it had 'over-paid', especially in light of the fact that NFU had described the offer as fair and reasonable. In light of this, he maintains that interest should be paid on the settlement.
- He is unhappy that I have stated that he contributed to the problems and delays that were experienced during the course of the claim.
- He kept trying to bring the claim to a conclusion and the main cause of the delays was his correspondence being treated as a complaint; and
- He is uncomfortable that any award for distress, poor service and other matters has been ignored. None of these matters were part of the settlement paid by NFU and should be considered over and above that settlement.

In addition, Mr R reiterated his concerns about the estate agents' estimates upon which the proposed loss in value calculations were based.

### **my findings**

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

Mr R has commented that he understood that our adjudicator had concluded that all of the claims were extensions on the 1983 claim. My provisional decision was a new assessment of the evidence available in relation to his mother's claims and his complaint and superseded all previous opinions that were given to him by our adjudicators.

I can confirm that I concluded that there were effectively two separate subsidence claims; 1983 and 1996 and that the subsequent claims were continuations of the 1996 claim.

I have noted Mr R's concerns about the evidence NFU has provided this service. However, I have seen no evidence in its files that causes me any concerns about this evidence.

I have carefully considered Mr R's further submissions regarding the decision making associated with the settlement of the claim. Mr R confirmed that the decision of how to settle the claim was an easy one, but that the decision could not be made until figures for the various settlement options were established and he had raised another option for the resolution of the claim. As I explained in my provisional decision, whilst Mr R may have raised the option of demolishing and rebuilding the property, it was not an option that was available to his mother. Therefore, the decision that she had to make was whether to have the property repaired or take a cash settlement to reflect the loss in value in the property. I am not persuaded that Mr R's mother needed the costings for the different options in order to do so. Mr R's response to my provisional decision also indicates that this decision was made, but that it was not communicated to NFU.

I accept that NFU did not at any point specifically inform Mr R's mother that it intended to make the decision on how to settle the claim and no longer wanted her input. However, I am not persuaded that in asking Mr R's mother how she wanted the claim settled removed its right to make that decision. Also, I do not consider that it was inappropriate for it to do so, given that there was no indication that a decision was forthcoming from Mr R's mother.

Mr R has stated that my comment that his mother wanted to sell the property was incorrect, along with similar details in NFU's records. Given that the property was being actively marketed at the time the last incident of subsidence was discovered there is clear evidence that Mr R's mother wanted to sell the property. Also, it was explained that the property had been on the market to allow Mr R's mother to move closer to them to enable them to provide her with assistance more easily. Whilst the property was withdrawn from the market for the claim to be dealt with, and I am happy to accept that there was no question about it being sold until it had been, I am not persuaded that my comment was incorrect given the information available.

Mr R has commented on the visit from the NFU representative in November 2007. I accept that the NFU representative was not in a position to negotiate a settlement offer with Mr R on that day, as both his and the NFU records show that this is the case. However, there is a disparity between the contemporaneous notes from NFU's file and Mr R's submissions about the purpose of that meeting. NFU's records indicate that the meeting was arranged for the offer NFU was making to be explained to Mr R, whereas he has stated that the representative was attending to explain subsidence processes and that the offer being made by NFU was not explained. As I was not present at the meeting, I am unable to confirm what the actual discussions that took place related to. However, given that the representative was sent with the settlement cheque, which Mr R has confirmed he was shown, I think it more likely than not that the offer was discussed.

Mr R has stated that he is unhappy that I stated in my provisional decision that NFU had paid out more than its maximum liability. Also, that my conclusion was incorrect, as it also had an additional liability of providing up to 25% of the sum assured for respite care for his mother. Initially, I would confirm that NFU would not be liable for providing alternative accommodation unless the property was being repaired, which it was not.

Therefore, the maximum liability under the policy was the lesser of the loss in value of the property or the cost of repairs. As such, I remain satisfied that NFU settled Mr R's mother's claim at a sum greater than its strict liability under the policy and that it is reasonable that I take this fact into account.

Mr R has asked whether this service has experienced other insurers paying out more than it is liable to do under an insurance policy. I am unable to comment on other cases in this decision and so it is not appropriate for me to discuss this matter.

I can confirm that I have not ignored the service issues or the distress and inconvenience that these issues would have caused Mr R's mother. However, I remain satisfied that any interest payment and compensation awards I could make in this case would not equate to the amount that NFU has paid in addition to its liability under the claim.

I have considered Mr R's comments about the underinsurance of the property. I believe that Mr R has concluded that NFU did not agree with the loss adjuster's conclusion that there was underinsurance because it did not take any action about it. Having read NFU's file, it did not disagree that the property was underinsured at various points, but after the initial claim, it did not consider that it was Mr R's mother's fault. Therefore, it did not take any action about the matter, other than to inform Mr R's mother about the underinsurance.

In relation to the solicitor's fees that Mr R's mother incurred, I am still not persuaded that the assistance of the solicitor was necessary. Whilst NFU did treat Mr R's correspondence as a complaint, which was not unreasonable given its content, I am not persuaded that it refused to communicate with him. Whilst it would not negotiate a settlement to the claim, it did not have to do so.

Mr R has stated that he kept trying to bring the complaint to a conclusion throughout the course of the claim and that he is unhappy that I have stated that he contributed to the delays.

Having reviewed the entire file again, along with Mr R's recent comments, I remain persuaded that NFU was not responsible for all of the delays experienced during the course of the claim; Mr R's insistence that he wanted to negotiate the claim settlement when it was clear that NFU had no intention of doing so did not assist in the progress of the claim. Indeed, Mr R has confirmed recently that the decision that the claim should not be settled by way of repair was made at an early stage, but there is no evidence that this was communicated to NFU.

Having carefully considered all of the correspondence and documentation again, I have not been persuaded to alter my provisional conclusions in relation to this complaint.

### **my final decision**

My final decision is that I partially uphold this complaint. In settlement of the complaint The National Farmers' Union Mutual Insurance Society Limited should recalculate the premium associated with the policy as detailed above, and refund any sums necessary along with interest at 8% simple per annum (less tax if appropriate) from the date of payment to the date of settlement. I make no further award.

Derry Baxter  
**ombudsman**