complaint

Ms P complains that The National Farmers' Union Mutual Insurance Society Limited ("NFU") have mishandled her insurance claim.

background

The details of this complaint are now well known to both parties, so I will not repeat them again here. The relevant details are also set out in my previous provisional decision, which is attached and forms part of this final decision.

I issued my second provisional decision on this complaint on 12 October 2020. I set out my findings and said that I did not intend to uphold Ms P's complaint for the following reasons:

- Given that Ms P had initially opted for NFU to reinstate her property, it was reasonable to expect that certain works would have to be carried out by NFU in order to gain a full understanding of how much the total rebuild project was likely to cost and whether there were sufficient funds to proceed with a full reinstatement. I was satisfied that this had been adequately explained to Ms P by the insurer, and that she had not objected to such works going ahead;
- NFU could not have reasonably known from the outset that Ms P's indemnity limit was not going to be enough to fund a total reinstatement, as they could not have known this until quotes were provided after putting the rebuild out to tender, which required certain costs to be incurred. On that basis, I didn't think NFU could have reasonably offered to pay the full indemnity limit as a cash settlement from the outset;
- The majority of works carried out by NFU (such as asbestos removal, making the property safe, structural planning/drawings, excavating foundations etc) would most likely have had to be carried out by Ms P in any event to prepare for the rebuild of her property, so I did not think it was unreasonable for such costs to be deducted from the overall indemnity limit – which the policy expressly lists as costs that will be indemnified (i.e. clearing the site, professional fees and meeting building regulation requirements) – as NFU have effectively taken the claim to a point where Ms P would then be able to proceed with reinstating the property by her own means with the remaining funds, without having to carry out those works that had already been done;
- I did not consider any of the costs disputed by Ms P to have either been unreasonable or unreasonably incurred by NFU, and she had not produced any evidence to suggest otherwise;
- The loss adjuster had taken steps to ensure that costs were applied to other areas of the policy wherever possible, so as to leave the maximum amount available under the buildings indemnity for the rebuild. I was satisfied that the loss adjuster had taken reasonable steps to keep the costs incurred by NFU to a minimum, and I did not see any basis on which to conclude that the costs incurred were unreasonable;
- Only £16,557.13 of the overall amount deducted from the indemnity limit accounted for professional fees, all of which appear to have been necessary in order to scope out the extent of the rebuild and to enable the project to be put out to tender – the remaining costs were incurred towards making good the 'damage' done to the building such that the policy terms allowed for it to be deducted from the indemnity limit in any event;
- In terms of the professional fees, Ms P had not demonstrated that these were unreasonable or inflated, or that she could have engaged the same professional services at a cheaper rate elsewhere. I did not consider the relevant policy clause to

be ambiguous as to whether these costs could be deducted from the indemnity limit, as I thought it's ordinary meaning was sufficiently clear that such costs would be included in the overall limit;
- Even if the clause were ambiguous with the result being that professional fees could *not* be deducted from the indemnity limit, I did not consider it would be fair and reasonable for NFU to now have to refund such fees given that Ms P has had the benefit of these services – as she would have always likely incurred these costs if granted the whole £185,000 indemnity from the outset – and she would effectively be benefitting twice;
- I was satisfied that NFU had kept Ms P informed of the vast majority of costs being incurred, and that she ought reasonably to have known that when she appointed the third parties to begin work that she would be incurring costs under the policy. Even accepting that NFU could have done more to keep her informed, I didn't think it would warrant any further compensation on top of the £150 paid already by the insurer;
- I hadn't seen any evidence that would suggest Ms P was forced to appoint Sergon and was denied the opportunity to appoint her own contractors. And from the emails I had seen, it appeared that it was open to Ms P to accept or reject the companies that were recommended to her;
- NFU may have suggested that Ms P use Sergon, but I didn't think it was unusual (nor underhand) for an insurer to appoint known or preferred contractors, as they often receive preferential rates which help to keep costs down. And I was not persuaded that Ms P had been forced to accept the contractors suggested by NFU, or that she had been denied the option of appointing her own;
- In terms of Ms P's own builder not being included in the list of contractors to provide a tender for the reinstatement, it appeared that this was an honest mistake that seemed largely unavoidable in the circumstances, as nobody had noticed (including Ms P) that the builder was no longer part of the company that had been included on the tender list;
- I had not seen any evidence of a cheaper quote having been provided by Ms P's preferred builder, but in any event, such quotes provided at the tender stage are typically only estimates, so there would have been no guarantee that the work would have been completed for the amount she was quoted;
- I did not think there had been any significant failings in relation to NFU's handling of the claim (including that of their loss adjuster) that would warrant further compensation on top of the £150 already paid by the insurer.

I invited further comments from both parties in response to my provisional findings. Ms P's representative disagreed with the provisional decision, maintaining his previous position that

- The policy construction allows for the recovery of costs/professional fees *in addition* to the maximum sum insured. In the event that the policy is ambiguous in this respect, the *contra proferentem* principle would apply;
- The loss adjuster falsely claimed that he was acting on behalf of Ms P rather than the insurer and failed to seek permission for the costs he was incurring purportedly on her behalf. He also handed contracts to his associates and refused to discuss the matter with Ms P.

NFU offered no further comments or evidence in response to the second provisional decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have decided not to uphold it.

For ease of reference, the relevant policy clause disputed by Ms P states:

> *"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 the 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 insured rebuilding cost shown on YOUR SCHEDULE and any extra amount for INDEX-LINKING. The amount WE pay will include any costs for:*
>
> - *Clearing the site (removing debris, demolition, shoring or propping up);*
> - *Professional fees (architects, surveyors and legal fees); and*
> - *Meeting building regulations requirements."*

In my provisional decision, I said I didn't think NFU had acted unreasonably by deducting their costs/fees from the indemnity limit as the above clause allows them to take such action. But Ms P's representative maintains that the proper construction of the above clause means that the indemnity limit is reserved entirely for 'damage' caused to the property, meaning that the insurer is liable to cover all other costs (such as those for professional fees and services) at their own expense and in *addition* to the indemnity limit set.

The term 'damage' is defined in the policy document as being *"unexpected and unintended physical loss or damage"*. I have already covered in my provisional decision that a large proportion of the costs incurred by NFU (such as those for clearing the site and removing asbestos etc) can reasonably be construed as making good the 'damage' done to the buildings, and therefore ought to be deducted from the indemnity. And I think the same can reasonably be said for the professional fees and services as well, as these were also costs that were incurred towards making good the damage caused by the fire.

I have also previously set out that I do not consider the policy clause to be ambiguous as to whether NFU can deduct the cost of professional fees and services from the indemnity limit, as the policy makes express provision for this and states that the amount NFU are liable to pay will *include* costs for professional fees and meeting building regulation requirements. I still do not consider the clause to be equivocal or ambiguous in this respect, and I'm still not persuaded that there can be any other rational construction of the clause in these circumstances that would result in the insurer agreeing to cover such costs *in addition* to the maximum sum insured. So, as I set out previously, I do not think there is any fair and reasonable basis in which NFU can be expected to pay for the costs incurred (which appear to be reasonable) out of their own pocket.

Ms P's representative has also reiterated concerns about the handling of the claim and the conduct of the loss adjuster. However, I have also already addressed these points in my second provisional decision and have been presented with no further comments or evidence that change my conclusions in this respect. So I will not repeat my reasoning again here,

and invite Ms P to revisit the reasoning set out under headings *handling of claim; choice of contractors; conduct of loss adjuster* in my second provisional decision.

So, given that neither Ms P nor NFU have put forwards any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my second provisional decision.

my final decision

For the reasons set out above and in the attached provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 25 December 2020.

Jack Ferris
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Ms P complains that The National Farmers' Union Mutual Insurance Society Limited ("NFU") have mishandled her insurance claim.

background

Ms P was added as a policyholder to her late mother's home insurance with NFU in January 2012. She made a claim in July 2017 after her house was severely damaged by fire. The claim was accepted by NFU and they appointed a loss adjuster. However, as the claim progressed, it transpired that Ms P's property was underinsured.

The original rebuild sum was set at £150,000 when Ms P was added as a policyholder in 2012. This amount was index linked and was automatically adjusted each year, and it was eventually accepted by NFU that the sum insured by August 2016 after index linking was £185,793. However, the loss adjuster subsequently informed Ms P that £35,000 of her indemnity limit would have to go towards professional fees, leaving a shortfall of around £30,000 for the rebuild, which NFU said they would not be able to cover.

NFU paid £150,000 as an interim payment to Ms P in June 2018, which she accepted 'without prejudice'. However, she complained that NFU have acted unfairly by deducting the professional fees from her indemnity limit, which has left her underinsured. In summary, she complains that:

- The policy wording is ambiguous and should be construed as meaning the maximum sum insured refers only to physical loss or damage, and that other expenses are payable *in addition* to the limit of indemnity.
- She did not set the limit of indemnity, and was never asked to provide a rebuild sum, so it must have been NFU that determined the figure that left her underinsured.
- There was no discussion regarding the indemnity limit when the policy was sold, and no information given to her as to how the initial figure of £150,000 was calculated. If she had known the policy left her inadequately insured, she would not have taken it. There was also no statement of demands and needs issued with the policy in contravention of the regulator's *Insurance: Conduct of Business Sourcebook* ('ICOBS', at 5.2.4G).
- NFU have fallen short of the standards set out in ICOBS 8.1.1 as they did not advise Ms P of the potential for any shortfall, and there has been no breakdown of how the £35,000 in fees had been incurred or what was done to earn them. Moreover, they were incurred without Ms P's knowledge or consent.
- The loss adjuster represented himself as an agent of Ms P's when in fact he was an agent of NFU's. He also acted inappropriately by telling Ms P that it was in her interests to appoint consultants that were associated with his company to oversee the demolition and rebuild of the property – which could amount to a conflict of interest.

As a result, Ms P wants NFU to provide a limit of indemnity of £185,793 exclusive of the costs and professional fees that had been charged. She also says that NFU's handling of the claim has caused her significant distress, inconvenience and health problems, and has hindered any progress being made on the rebuild of her home. So she is also seeking to be compensated for the trouble and upset caused.

NFU didn't uphold this element of Ms P's complaint. In summary, they said:

- The policy wording is not misleading and clearly explains which aspects of the claim will be considered within the indemnity limit, which includes associated costs.
- Ms P was made aware of the potential for underinsurance from the beginning of the claim.

- The loss adjuster initially said £35,000 would be needed for expert fees, but NFU's claims department subsequently made considerable amendments to reduce the underinsurance as much as possible, meaning the shortfall was reduced to £4,618.
- There is no documentary evidence to show how the sum insured was calculated, but they deny setting the amount themselves as the evidence available suggests they were provided with the figure of £150,000 by either Ms P or her representatives.
- In any event, it was a non-advised sale and the renewal documents issued since 2012 clearly set out that it was the policyholder's responsibility to ensure the sums insured were adequate.
- The delays with the claim appear to be a by-product of the original sum insured on the property, which meant the claims settlement was likely to encounter difficulties from the outset.

However, NFU did acknowledge there had been some service failings for which they were responsible – such as delays in responding to Ms P's complaints and continuing to charge the full premium after the fire – for which they awarded £150 compensation. Unhappy with this, Ms P complained to our service.

Our investigator didn't uphold the complaint. She thought the policy wording clearly set out that the indemnity limit was inclusive of professional fees, and she also thought it was most likely that Ms P had set the sum insured originally rather than any agent of NFU. Ms P didn't agree, so the complaint was passed to me to determine.

I issued my provisional decision on this complaint in November 2019. I said I didn't intend to uphold it and set out the below provisional findings:

policy wording

Ms P's claim was accepted by NFU as her policy covers her property against damage caused by fire.

The policy terms and conditions set out:

> *"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 the 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 insured rebuilding cost shown on YOUR SCHEDULE and any extra amount for INDEX-LINKING. The amount WE pay will include any costs for:*
>
> - *Clearing the site (removing debris, demolition, shoring or propping up);*
> - *Professional fees (architects, surveyors and legal fees); and*
> - *Meeting building regulations requirements."*

Ms P says that NFU has no contractual right to deduct professional fees from the maximum sum insured. She says the policy wording states that NFU will pay for "DAMAGE" – defined by the policy as "unexpected and unintended physical loss or damage" – which she submits should be construed as meaning her indemnity limit of £185,793 applies only to physical loss or damage. In support of this position, Ms P submits that:

- *Where NFU have stated the amount they will pay will include costs for professional fees, they have not stated that the amount they will pay for "DAMAGE" will include such costs. And in the absence of such an implication, the clause must be taken as meaning NFU will pay up to £185,793 for physical damage with professional fees being paid in addition to the maximum sum insured.*
- *Where such wording is ambiguous, the contra proferentem doctrine requires the ambiguity to be construed against NFU as the party that drafted the policy, and in favour of Ms P.*

Section 69 of the Consumer Rights Act 2015 deals with contract terms that may have different meanings, and stipulates that 'if a term in a consumer contract…could have different meanings, the meaning that is most favourable to the consumer is to prevail'. This effectively codifies the long-established rule of contractual interpretation known as contra proferentem, whereby an unclear or ambiguous term is construed against the person who drafted it – in this case, NFU.

However, the question first arises as to whether there is in fact an unclear or ambiguous meaning. And to answer that, it's important to consider the terms and conditions of the contract in their entire context. It's helpful to consider the 'common sense' principles of contractual interpretation set out by Lord Hoffmann in the House of Lords case of Investor Compensation Scheme Limited v West Bromwich Building Society and Others [1997] UKHL 28 (which I think should apply equally to a consumer contract – because they are firmly based on equitable principles of fairness and reasonableness):

> *"Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows:*
>
> *(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*
>
> *(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact" but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*
>
> *(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion in which to explore them.*
>
> *(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (see Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd. [1997] 2 WLR 945*
>
> *(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in The Antaios Compania Neviera S.A. v. Salen Rederierna A.B. 19851 A.C. 191 , 201:*
>
> > *"… if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."*

The alleged ambiguity in Ms P's case is due to the policy term stating 'the amount we pay' will include professional fees rather than specifically stating the 'amount we pay for damage' will include professional fees. But having applied the principles of contractual interpretation above – and having considered the policy documentation holistically – it seems to me the correct interpretation that the reasonable consumer policyholder would understand is that they were only insured up to the maximum amount shown in the policy schedule, and that this amount would include all fees and costs related to the claim.

This is, in my opinion, the interpretation that yields to business common sense – by which I mean the terms and conditions on which any prudent insurer is likely to do business with an ordinary consumer. I appreciate the Investor Compensation judgment was made in respect of commercial contracts. But this service would never knowingly interpret an insurance policy in a way that would flout business common sense, or would attribute to the parties an intention which they could not reasonably have had. Whilst I am only required to take account of the relevant law (rather than be bound by it), I wouldn't lightly ignore such weighty authority from the (then) highest court; and in any event, I consider the House of Lords' approach to be fair and reasonable, based as it is on common sense, the factual background, and the reasonable expectations of contracting parties – even where the contract is not individually negotiated.

So even though the term may not specifically mention 'damage', it would not make business common sense to interpret this to mean that the insurer will pay the maximum sum insured in relation to these costs alone, yet still be liable to pay an unspecified and potentially unlimited amount for all other related costs. I do not think that this was ever the intention of the policy, and I do not think the reasonable policyholder would expect it either. So I do not intend asking NFU to apply the policy term in this way.

sale of the policy and the maximum sum insured

Ms P further submits that the maximum sum insured was not initially set by her, and that she was never asked to provide such a figure. She says it was NFU that determined the indemnity limit that subsequently left her underinsured. As a result, Ms P submits that:

- *NFU have failed in their obligations under ICOBS 6.1.5 as she was not given enough information to make an informed decision about the arrangements proposed in the policy.*
- *If the sale was 'non-advised', as NFU contend, they have failed in their obligations under ICOBS 5.2.4G which requires a statement of demands and needs to be issued. In any event, it was not at any point explained to Ms P that it was a non-advised sale.*
- *If she had known that the limit of indemnity included an unspecified amount for fees to be deducted from building costs, she would have made further inquiries as to how the figures would work in the event of a total loss and would not have taken the policy if she knew she could've been left underinsured.*

NFU deny that the indemnity limit was set by them or their agents. As it was a non-advised sale, they say the onus was on Ms P to ensure that the sum insured was adequate for the risk in question. NFU further submit that:

- *Their complaint handler said she remembered very clearly a conversation with Ms P where they discussed how the sum insured was set. She says Ms P told her that it was the conveyancing solicitor who set the sum insured, but NFU have been unable to locate a call recording of this conversation.*
- *Their standard process was to enquire whether a survey had been carried out on the property (as this would usually include the rebuild cost). If the figure was not known by the policyholder, an entry would be made on their system regarding the construction type, number of bedrooms, etc. and then reference would be made to the Building Cost Information Service (BCIS) website for guidance. However, this wouldn't usually amount to a round figure of £150,000, so NFU think this figure must have been provided by Ms P.*

- *In any event, NFU say the renewal documents issued each year from 2014 onwards advised the policyholder to ensure everything was insured for a sufficient amount – and the documents sent included the current maximum sum insured, so Ms P ought to have known the amount she was insured for, and should have acted if the amount was likely to be inadequate.*

I appreciate there is much dispute about how the policy was initially sold to Ms P in 2012 – including whether it was an advised sale, and whether it was Ms P or NFU that set the indemnity limit. However, following the initial sale, the policy renewed each year and new documentation relating to each new insurance contract was sent to Ms P. And while the initial sale in 2012 is still relevant insofar as it was the first instance where information was provided about the property, I've also got to consider what has happened since the sale, and what the relevant obligations were of the parties upon each subsequent renewal of the insurance contract. And given that date of loss was 28 July 2017, I've placed particular focus upon the policy renewal that took place directly before this in 2016.

NFU sent the relevant renewal documentation to Ms P on 20 August 2016 (enclosed with this decision), as her policy renewed each year on 22 October. That's a relatively generous notice period in my experience – and should allow plenty of time to query anything or make necessary changes. The letter sent to her stated:

> *"**Important documents we'd like you to check***
>
> *As this is a non-advised policy, we haven't provided you with a recommendation. Please read the enclosed documents thoroughly to make sure the cover still meets your needs".*

On the front page of the renewal letter it also says:

> *"**Sums insured***
>
> *Please check your insurance schedule to make sure everything's insured for the right amount. Where the insured amount is too low, any claim you make may be reduced to reflect this. For buildings, you may find the residential rebuilding cost calculator on the BCIS (Building Cost Information Service) website helpful…"*

The renewal documentation includes an updated schedule which states that the rebuild cost at this point had been set at £179,806. So although there is much dispute about who set the initial amount of £150,000, I'm satisfied that, at least upon renewal, it was subsequently made clear to Ms P how much her property was insured for, and therefore it was her responsibility to ensure that this amount was adequate for her circumstances. So I don't consider it would be fair to now ask NFU to cover the amount Ms P was left underinsured when she failed to check the amount – despite it being made clear in writing that this was her responsibility.

Ms P says it was never explained to her that the policy was sold on a non-advised basis, and that even if it was, NFU have failed in their obligations under ICOBS 5.2.4G which requires a statement of demands and needs to be issued. But as I've already set out above, the renewal documentation states on the first page that it is a non-advised policy. And the documentation also sets out a statement of demands and needs, which states:

*"**Demands and Needs***

This policy meets the demands and needs of those who wish to insure against losses resulting from ownership or responsibility for their personal property, personal liability, travel and legal expenses.

We have not provided you with a recommendation on the suitability of this policy, although we have provided you with information for you to make your own decision. Please read the enclosed documentation carefully to ensure the cover provided meets your needs".

So, having considered NFU's relevant obligations under ICOBS at the time, I'm not persuaded they have failed in their obligations – e.g. ICOBS 6.1.5 (which requires a firm to give appropriate information so the customer can make an informed choice) as I think appropriate information was provided within the renewal documentation. It isn't clear whether an updated policy summary or key features document was provided with the renewal documentation. But this would not amount to a failure of their obligations at the time in any event, because ICOBS 6.1.10 states that a firm 'may wish to provide information in a policy summary or as a key features document'. So it was not a mandatory requirement for 'non-protection' policies, i.e. those covering risks to real property and chattels rather than persons. And having considered the renewal documentation, it included information such as a statement of demands and needs, any changes that had been made to the policy, as well as the policy benefits and sums insured. And on this basis, I don't consider there was a breach of the ICOBS regulations in place at the time.

Ms P says that if she had known the indemnity limit included associated fees, then she would not have taken the policy. I appreciate that NFU were required to highlight any unusual or onerous terms so that Ms P could make an informed choice about whether to renew the policy. But it's not possible for an insurer to highlight every single policy term upon which a prospective policyholder may attach individual importance. That would defeat the purpose of policy summaries or key facts documents. And I don't consider that this term is particularly unusual or onerous, such that it ought to have been brought to Ms P's attention in any event (for the reasons I've already set out previously).

<u>conduct of NFU and their agents</u>

Ms P further submits that the conduct of NFU and their agents fell below an acceptable standard, as she was not happy with their handling of the claim. In summary, she submits:

- *They have fallen short of the standards set out in ICOBS 8.1.1. as they did not advise Ms P of the potential for any shortfall in the total sum insured, and there has been no breakdown of how the £35,000 in fees had been incurred or what was done to earn them. Moreover, they were incurred without Ms P's knowledge or consent.*
- *She is unhappy about the loss adjuster's conduct in one of their meetings where he said that £35,000 was payable in costs and fees and then provided no explanation as to why.*
- *The loss adjuster represented himself as an agent of Ms P's when in fact he was an agent of NFU's. He also acted inappropriately by telling Ms P that it was in her interest to appoint consultants that were associated with his company to oversee the demolition and rebuild of the property – which could amount to a conflict of interest.*

ICOBS 8.1.1 at the relevant time set out that an insurer must:

(1) Handle claims promptly and fairly;

(2) Provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;

(3) Not unreasonably reject a claim…; and

(4) Settle claims promptly once settlement terms are agreed.

I've considered the available evidence to determine how the claim was handled by NFU and their agents – such as the correspondence sent between the parties at the time. And having done so, I do not think there is enough to suggest that NFU have failed in their obligations set out above.

Ms P says the first indication she had of any possible shortfall in insurance was at a meeting on 25 May 2018 where the loss adjuster said without explanation that £35,000 would be deducted in fees. However, I can see that the loss adjuster sent an email to Ms P on 2 August 2017 (which was at the very start of the claim) which explained that the damage was extensive, and that in relation to the sum insured "we will need to review whether this is sufficient to cover all the costs of decontamination, debris removal, and reinstatement but this is the maximum sum that NFU will be able to pay in respect of building works". So I'm satisfied that it was at least made clear to Ms P that there was a risk of a shortfall, given that it had to be determined whether the maximum sum insured was sufficient.

In terms of the underinsurance, Ms P says she had not been provided with any breakdown of how the £35,000 in fees had been incurred, or what was done to earn them. NFU have provided us with a breakdown of the costs involved, which they say was sent to Ms P on 27 July 2018. These costs, amongst other things, include amounts for:

- *Surveying fees;*
- *Invoices for making safe and removing the chimney and removal of the unstable roof;*
- *Engineer fees (including building regulations, planning application, drawings and design calculations);*
- *Contributions to party wall repairs; and*
- *Asbestos decontamination charge.*

The total amount comes to £29,416. I've seen no evidence to suggest that any of the costs incurred were unnecessary or exorbitant in the circumstances. But if Ms P considers that any of the costs should not have been incurred, she should explain why and support any objection with reasonable evidence by the deadline set within this decision.

In terms of the initial costs being quoted amounting to around £35,000, NFU have explained that around £5,000 was eventually not allocated or charged to the buildings section of the policy (such as those relating to the removal of fire debris to expose and protect the party wall). And they've also clarified that the surveyor's fees can be charged on a scale based on the value of the contract, meaning that up to an additional £2,000 could have been charged. However, they subsequently calculated their fee at a lower percentage of the contract sum.

So I appreciate that £35,000 was not the eventual total of the costs incurred, but it instead appears to have been more of an approximate estimate. And given that certain fees and charges had the potential to be higher, I don't think it was unreasonable for the loss adjuster to quote an amount at the higher end of the scale as the 'worst-case scenario'. I understand that Ms P is unhappy with how the loss adjuster told her about the amount that was required for the fees. And this arguably could have been handled better. But it is not a failing that I consider to have had such a detrimental impact that it would warrant an award of compensation in the circumstances.

Ms P is also unhappy because the costs were incurred without her consent or knowledge. But under the policy terms and conditions, I cannot see that NFU were required to obtain this. The terms state that "WE may at OUR option, replace YOUR BUILDINGS or arrange for repairs to be carried out". There is nothing to suggest that NFU would have to consult Ms P or seek her consent in relation to the costs incurred in the arrangement of any repairs. Indeed, such an obligation would likely prove quite impractical. And in my experience, this is common place across insurance policies of this nature. I appreciate that NFU were obliged to keep Ms P appropriately updated with any progress. And I think there's an implied duty not to incur unreasonable or wasted costs when the other party has no right of consultation or veto. But I'm not persuaded there was such a lack of communication that it would warrant compensation either.

Finally, Ms P submits that the loss adjuster represented himself as an agent of Ms P's when in fact he was an agent of NFU's. A loss adjuster is typically instructed by an insurer and tasked with handling the claim and ensuring that the cost to the insurer is not unreasonable or outside the scope of cover. And given the nature of their role, they will inevitably have a lot of contact with the policyholder as well, so it wouldn't be unusual if they were to help guide the insured through the claims process as well. But in the same regard as the insurer, they are ultimately governed by professional codes of conduct and will be expected to act fairly. And in the circumstances, I haven't seen persuasive evidence that would suggest the loss adjuster acted in a way that was unreasonable or misled Ms P.

Ms P says the loss adjuster acted inappropriately by telling her that it was in her interest to appoint consultants that were associated with his company to oversee the demolition and rebuild of the property. But again, the policy entitles NFU (and their agents) at their option to arrange for repairs. It isn't uncommon for an insurer to appoint contractors from a list of preferred suppliers that offer preferential rates. Indeed, this probably helps to keep overall costs – and therefore premiums – at a reasonable level. But ultimately, this is the insurer's choice, not the policyholder's (unless the insurer has agreed otherwise). And I haven't seen anything that would lead me to believe that the eventual arrangement resulted in any unfairness to Ms P.

So, having considered all the evidence, I'm not persuaded that NFU has done anything substantially wrong such that they should pay Ms P the total indemnity limit exclusive of costs and professional fees, or that would warrant an award of compensation.

responses to the provisional decision

I invited further submissions in response to my provisional decision. NFU agreed with my findings, but Ms P disagreed. In summary, she says:

- The word used in the indemnity clause is "damage", which means that there has to have been a physical change in the insured subject matter. The limit on indemnity is for "damage" alone, and professional fees cannot constitute "damage" in this respect, and there is nothing in the rest of the policy document that would lend itself to such a construction.
- The natural meaning of the term should not be regarded as incorrect simply because it seems to be an imprudent term for one of the parties to have agreed, and there is no ambiguity about the way the contract is drafted – which is that the cap on liability does not extend beyond 'damage'.
- Even if there were ambiguity, the legal test is not concerned with the correct interpretation that the 'reasonable consumer policyholder would understand' as the *contra proferentem* principle would dictate that the interpretation most favourable to the consumer should prevail.
- The loss adjuster had no right to incur close to £30,000 of Ms P's indemnity without her consent or any consultation. The law dictates that an indemnity provided by the policy is for the assured to spend as they wish – and that wish may not have been for it to be used on demolition or rebuilding.
- There was no communication as to the incurring or the amount of costs until after the money had been spent.

- There is no evidence to contradict the fact that the loss adjuster held himself out as acting for the policyholder and made decisions against Ms P's interests and in favour of his own without making any disclosure. NFU are responsible for this and should pay compensation.
- Ms P does not agree that the costs incurred were reasonable in any event and has disputed certain items for which she has been charged.

my provisional findings

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

Since I issued my provisional decision in November 2019, there have been a number of further detailed submissions from both parties on various aspects of this complaint. As a result, I have reconsidered all submissions again in order to properly address the crux of this complaint – which centres around the costs incurred by NFU as well as their handling of the claim.

I will therefore deal with these two main issues substantively within this provisional decision – giving both parties the opportunity to put forwards any final comments in response.

Award limit

Given that Ms P referred her complaint to this service in September 2018, the maximum sum I would be able to award in this case is £150,000. NFU have not made any submissions in respect of Ms P's complaint potentially *exceeding* this award limit. But I note that they have already paid £150,000 to Ms P as an interim payment under the policy, which she accepted.

The total amount Ms P is claiming from NFU is her entire buildings indemnity limit of £185,793 – which would exceed the sum this service is able to award. However, it appears to be generally accepted by both parties that Ms P is entitled to the £150,000 interim payment made by NFU under the policy – meaning that the amount actually in dispute in this case is the £29,416.90 in costs incurred by the loss adjuster.

Therefore, I do not consider the maximum award limit to have been exceeded already in these circumstances. So any award that could be made in respect of this complaint would be in addition to the £150,000 already paid and as such, would be legally binding if accepted by Ms P, but would still of course have to respect the overall policy limit.

Costs incurred

The policy terms and conditions set out how NFU can settle a claim and what costs they will indemnify. I've included the relevant clause again below for ease of reference:

> *"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 the 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 insured rebuilding cost shown on YOUR SCHEDULE and any extra amount for INDEX-LINKING. The amount WE pay will include any costs for:*
>
> - *Clearing the site (removing debris, demolition, shoring or propping up);*
> - *Professional fees (architects, surveyors and legal fees); and*
> - *Meeting building regulations requirements."*

Ms P submits that the loss adjuster deducted £29,416.90 in costs from her indemnity limit without consulting her. Leaving aside the matter of policy interpretation for now, I've first considered whether

NFU ought to have paid Ms P the entire sum insured as a cash settlement from the outset, rather than incurring costs towards reinstatement only to later have to cash settle.

Given that Ms P had initially opted for NFU to reinstate, the insurer has explained that it was necessary to undertake certain works and go through the tendering process first in order to establish whether there were sufficient funds to proceed with a full reinstatement. And I can see that this was explained to Ms P in emails sent by the loss adjuster, where he detailed the sort of works they would have to undertake to establish whether there was enough insurance to cover them.

For example, on 2 August 2018, the loss adjuster sent an email to Ms P saying:

> *"Once I have received the asbestos test results, the advice of [the structural engineer] and formal acceptance of policy liability, I will arrange to appoint a Surveyor to establish the costs of reinstating your home and to agree a way forward for you".*

And similarly, on 27 September 2018 he said:

> *"The building sum insured is the limit of any payment that NFU can make in respect of the building related works, this includes the asbestos decontamination of the building, demolition, rebuilding costs and related fees.*
>
> *Before we can do anything, the asbestos decontamination needs to be carried out and when [the surveyor] receives formal instructions, he can arrange for this to be carried out. He can then organise demolition quotes and prepare a specification for rebuilding which will be put out to tender, to include an Engineer's roof design.*
>
> ***When the costs reinstatement [sic] are known, you can decide how you wish to proceed but the limit of payment by NFU will be the sum insured, plus any index linking that can be applied*"** [my emphasis added].

Given the sheer magnitude of a reinstatement project following a fire, I think it's reasonable to expect that certain works would have to be carried out in order to gain a full understanding of how much the total project is likely to cost. So I don't think NFU could reasonably have known from the outset that Ms P's indemnity limit was not going to be enough to fund a total reinstatement, as they could not have known this until the quotes were received back after putting the rebuild out to tender. It was only after the quotes were shown to exceed the indemnity limit that NFU decided to cash settle with the £150,000 of the insured amount remaining so Ms P could carry on with the reinstatement herself. But in light of the emails outlined above, I'm satisfied that Ms P was adequately informed that NFU would need to undertake certain works before deciding how to proceed, and I've seen nothing to suggest that she objected to such works being carried out.

It therefore follows that I don't think NFU could have reasonably offered to pay the full indemnity limit as a cash settlement from the outset. The insurer submits that all the costs incurred were necessary in establishing whether to indemnify or reinstate. And I note that the majority of works carried out (such as asbestos removal, making the property safe, structural planning/drawings, excavating foundations etc) would most likely have had to be carried out by Ms P in any event in order to prepare for the rebuild – and I have not seen any evidence to suggest otherwise. So I do not think it is unreasonable for such costs to be deducted from the overall indemnity limit in these circumstances – which the policy expressly lists as costs that will be indemnified (i.e. clearing the site, professional fees and meeting building regulation requirements) – as NFU have effectively taken the claim to a point where Ms P was then able to proceed with reinstating the property by her own means with the remaining funds, without having to carry out those works that had already been done.

I have also considered whether the costs incurred, and subsequently deducted from the indemnity limit, were reasonable.

Were the costs reasonable?

The loss adjuster has provided a breakdown of the £29,416.90 in costs – which includes clearing the site (removing debris/demolition etc.) as well as professional fees and meeting buildings regulations – which were incurred under Ms P's buildings indemnity. I presented these costs to Ms P for comment and asked her to outline whether she thought any costs in particular were unreasonable. In response, she said:

- The Herse fencing was erected by Ms P's own builder, which he did not charge for;
- Despite being told that the asbestos had been removed on 1 December 2017, substantial quantities of it remained on site.
- Payment was made to clear debris from where the conservatory had stood, but it was subsequently refilled with debris from other rooms and not placed in the skip.

So Ms P submits that there are both *unreasonable costs* (i.e. inflated costs that could have been charged for less elsewhere) as well as costs *incurred unreasonably* (i.e. unnecessary costs which may have been reasonable but did not need to be incurred).

In terms of the Herse fencing, this is a cost that Ms P says was incurred unreasonably as it was not charged for by her contractor. But I can see from the breakdown of costs that no amount was actually charged for this or deducted from the indemnity limit, so I need not consider this further.

Then there are the costs that Ms P says were unreasonable. In respect of the asbestos removal, the loss adjuster has agreed that it was subsequently found to be incomplete. He said there was some confusion among the contractors, as a specialist had said they could not fully complete the asbestos removal due to the building being unsafe at the eaves level. However, it seems this information was not passed on to management, who produced an invoice believing the site had been cleared. But when it later came to light that further asbestos was still to be removed, the loss adjuster confirmed that the contractors arranged this at no extra cost to Ms P – despite it resulting in a further £5,000 worth of work for the contractors. It therefore does not appear that Ms P has overpaid for the asbestos removal in this respect, which was eventually completed for near enough the same cost as originally quoted.

Ms P also says that she had paid for debris to be cleared from the site only for it to be refilled with debris from other rooms. However, the loss adjuster has said that payment was not made specifically to clear debris from the site, but to make safe and remove asbestos contaminated material. I've not seen any individual item on the breakdown of costs that is specifically for 'debris removal' – only costs for removing asbestos. So, in the absence of specific evidence from Ms P to the contrary, I'm not persuaded that she has specifically paid for debris removal, so there is no cost to dispute in these circumstances.

So I currently do not consider that any of the particular costs disputed by Ms P were either unreasonable, or unreasonably incurred by NFU.

For example, the loss adjuster has summarised the various quotes he received for the asbestos removal and making the building safe, which were as follows:

Contractor one: £10,856.67
Contractor two: £16,508.94
Contractor three: £29,304.00

Contractor one was chosen to proceed, and the final cost paid out of Ms P's indemnity for this work was £11,417.80. So although this was slightly more than was originally quoted, it still came at a cheaper cost than any of the other providers were quoting.

I've also considered the cost of the other physical works that were carried out on Ms P's site which she has not disputed. In the absence of evidence to the contrary, I cannot see that these costs were incurred unreasonably either.

I can see, for example, that the loss adjuster has taken steps to ensure that certain costs were applied to other areas of the policy (such as applying party wall repairs and food removal to the liability/contents sections of cover respectively) so as to leave the maximum amount available under the buildings cover for the rebuild. So on balance, I'm satisfied that the loss adjuster took reasonable steps to keep costs to a minimum, and I currently see no basis on which to conclude that the costs incurred were unreasonable.

I have also considered the professional fees that were paid out of Ms P's buildings insurance indemnity, which amounted to £16,557.13 in total. These funds were used to pay for services such as building consultants ('Sergon'), structural designs/drawings, as well as building regulation and planning applications – all of which appear to have been necessary in order to scope out the extent of the rebuild and to enable the project to be put out to tender, which was a precursor to understanding how much the reinstatement project would actually cost.

So I don't consider any of the services paid for out of the indemnity limit to have been unnecessary in this respect either. Ms P has not provided any persuasive evidence to demonstrate that these costs were unreasonable, or that she could have had such services completed for a cheaper price. And similar to the building works that took place, Ms P would seemingly always had to have paid for such professional services in order to prepare her property for reinstatement. So I'm satisfied that it was also fair and reasonable in the circumstances for NFU to deduct such costs from her buildings indemnity.

So, turning back now to the issue of policy interpretation and whether it allows NFU to deduct the £30,000 in costs from the buildings indemnity limit. First, only £16,557.13 of the overall amount deducted from Ms P's indemnity actually accounted for professional fees – not £35,000 as was originally stated. And I'm satisfied that the remaining funds that paid for work such as clearing the site can reasonably be construed as making good the 'damage' done to the buildings – such that there is no question of this amount having been unfairly deducted in line with the policy wording.

This leaves the matter of the professional fees and costs for meeting building regulation requirements which, as I've outlined above, appear to have been services that Ms P would have *always* likely had to pay in order to reinstate her property – which always seemed to be her intention – whether she was given the full indemnity of £185,793 from the outset of her claim or otherwise. Ms P has not provided any evidence to show that the professional fees were inflated, unreasonable, or that she could have engaged the same professional services at a lower rate elsewhere.

Ms P submits that *contra proferentem* principle would dictate that the interpretation of the clause that is most favourable to the consumer should prevail. But I do not consider the relevant clause to be ambiguous as I think it's ordinary meaning is sufficiently clear, as I have set out previously in my first provisional decision. But even if it were ambiguous, the relevant law is something I am only required to take into account when deciding a complaint. (see DISP rule 3.6.4R of the *Financial Conduct Authority Handbook*). I must still determine what is, in my opinion, fair and reasonable in all the circumstances of the case.

So even if I were to accept that professional fees cannot reasonably constitute 'damage' under the policy (which I do not), given that Ms P has had the *benefit* of these services, I don't consider it would be fair and reasonable to now ask NFU to pay Ms P around £16,500 that she would've likely spent on similar services if paid the full indemnity from the outset, as she would effectively be benefitting twice.

Handling of the claim

Ms P has raised further points detailing why she is unhappy with the way NFU handled the claim. She submits that NFU were under an obligation to keep her informed as to what costs were being incurred, but that they failed to do so. However, NFU say this is incorrect as there were various instances where they informed Ms P of what was happening and how much it would cost. They've said, for example:

- She was aware that asbestos investigation and testing had to be carried out from the outset and was made aware of the debris and asbestos clearance costs on 26 September 2017.
- She signed a contract with Sergon in October 2017 which detailed their fees.
- An email was sent on 2 March 2018 explaining that they were instructing a contractor to dig a trial pit to check the depths of the foundations.

I appreciate that Ms P may not have been consulted in relation to every single cost. However, it does seem that NFU kept her informed of the *vast majority* of costs being incurred, and I think she ought reasonably to have known that when she appointed these third parties, she would be incurring costs. In any event, even if I accept that NFU *could* have done more in this respect, I don't think any further compensation than the £150 the insurer has paid already for the trouble and upset caused to Ms P (as detailed in their final response) would be warranted in these circumstances.

Choice of contractors

Ms P says that the loss adjuster presented Sergon as the company to use to sort out everything for her, and that she was asked to appoint these contractors with no other option being made available. But NFU say that under no circumstances did the loss adjuster advise Ms P that she must use Sergon, and that she could have always used her own contractors if she wanted.

I haven't seen any evidence that would suggest Ms P was forced to appoint Sergon and was denied the opportunity to appoint her own contractors. And from the emails I have seen, it would appear that it was open to Ms P to accept or reject the companies that were recommended to her. In an email sent to Sergon on 23 August 2017, for example, the loss adjuster states that they are to attend the site *'subject to the insured confirming that your services are to be retained*'. So I cannot say that NFU have acted unreasonably in that regard. I appreciate they may have recommended Sergon. But as I said in my initial provisional decision, it is not unusual (and neither is it considered underhand) for an insurer to appoint known or preferred contractors, as they often receive preferential rates which help to keep costs down.

Ms P complained that she had nominated a builder ("B") that she wanted to be included on the list of contractors to provide a tender for the reinstatement, but says that he was not included on NFU's list. However, it appears there was some confusion present here, as the tender was instead sent to B's brother's building business of the same name ("B Ltd") – a company with which B had recently parted ways and was no longer associated. It appears that nobody (including Ms P) noticed that B was no longer part of B Ltd, or that they were not the same company, meaning that Ms P's preferred builder was not eventually included on the tender list.

It seems this was an honest mistake that seemed largely unavoidable in the circumstances, as it only came to light at a meeting on 24 May 2018 that B had started working independently of B Ltd. So I don't think this is an error that NFU can fairly be held responsible for, or that it would warrant compensation. And I note that B subsequently became involved in the proposed work to be carried out by B Ltd in any event.

Ms P says that B's price to reinstate was £35,000 less than the cheapest contractor on the tender list (that being B Ltd at £166,641). I haven't seen evidence of this lower quote, but in any event, even if that were the case, my understanding is that such quotes provided at this stage are only estimates, and there are no guarantees that the work will be limited to the provisional quote.

In summary, I'm not persuaded that Ms P was forced to accept the contractors suggested by the loss adjuster, or that there was anything wrong with them suggesting preferred companies. I'm also satisfied that NFU gave Ms P the option of appointing her own contractors if she wished, and that NFU sought to include these where requested.

Conduct of loss adjuster

Ms P has reiterated that the loss adjuster held himself out as acting for her rather than as an agent of the insurer. But as I said in my provisional decision, I haven't seen any persuasive evidence that would suggest the loss adjuster acted in this way, or indeed in a way that was unreasonable, dishonest, or that was intended to mislead Ms P. Even if the loss adjuster did give the impression that he was acting on Ms P's behalf, I cannot see that this has resulted in any unfairness or detriment. And on the whole, I'm satisfied that NFU have complied with their relevant obligations set out in ICOBS 8.1.1R.

I appreciate some things could have been handled better, such as the way the loss adjuster broke the news of the extent of underinsurance to Ms P. But having considered all aspects of the way the claim was handled, I do not think that any of the failings (alleged or identified) here would warrant compensation at a higher level than the £150 that has been paid already by NFU – which I consider to be a fair and proportionate reflection of the distress and inconvenience caused by the failings for which they are responsible (as opposed to the natural distress and inconvenience caused by this terrible fire). So I do not intend to make any further award.

My provisional decision

For the reasons given above, I do not intend to uphold this complaint.