

Complaint

Miss G is unhappy with the way The National Farmers' Union Mutual Insurance Society Limited ('NFU') handled an escape of water claim under her property insurance policy.

All references to NFU include their agents.

Background

Towards the end of July 2017 Miss G found damage caused by an escape of water in her study so she informed NFU. The water seemed to be escaping from the bathroom above. Within a few days of discovering the water damage Miss G arranged for her own plumber to visit. He fixed a leaking fitting found in the ceiling void that was below the bathroom and above the study.

At the beginning of August 2017, NFU attended the property to assess the damage. They disposed of some damaged furniture and installed dehumidifiers in the study where most of the damage seemed to be at the time.

At the end of September 2017, Miss G informed NFU that her dining room, which is next to the study, was now full of mould and mildew including some possessions she had stored in there. She asked for the entire wall in the dining room that was affected by the water damage to be brought down to bare bricks immediately along with the study wall and ceiling - but this was not done until sometime later because NFU spent approximately seven weeks drying the area from mid - September 2017 onwards.

At the beginning of October 2017, upon further examination of the property, NFU discovered further leaks. During most of this time NFU was investigating whether Miss G was underinsured so reinstatement work wasn't really started until this issue was resolved.

In October 2017, Miss G ordered a caravan to use as alternative accommodation because of the mould that was in her house. Miss G used the caravan for a few weeks and NFU then agreed they would make some upgrades to an outbuilding, which is located on her property, so this could be used as alternative accommodation. This meant Miss G would be able to stay with her animals on site while the reinstatement works took place at the main house. For a short period of time Miss G and her family did stay in the outbuilding but Miss G says, due to the unfinished condition of the outbuilding it wasn't habitable, and so they couldn't stay there for a prolonged period of time.

Most of the building work on the main house was due to be completed before Christmas 2017 but this didn't happen. Miss G says this was due to NFU's contractors. But NFU's contractors say it was due to Miss G making demands for further work that they would consider betterment, and therefore not covered under the insurance policy.

Whilst the reinstatement works took place things didn't go as planned. There were situations where things in Miss G's home were damaged and the relationship between Miss G and NFU's contractors became strained at times. In January 2018, Miss G explained that she wasn't happy for NFU's contractors to come back and finish the reinstatement works. NFU have paid Miss G for some of the damages that were previously caused by them and both parties have used their best endeavours to try to reach agreement on most of the outstanding issues. But there were elements of the claim which both parties could not agree on so Miss G brought her complaint to our service.

Our investigator looked into the complaint and partially upheld it. He was of the opinion that NFU should pay Miss G for clothing and a rug damaged by paint in the cloakroom, as well as the bronze tap in that room. He said that NFU should also pay Miss G £250 for the utility costs and a further £428.58 towards the Christmas food that was spoiled.

In regards to alternative accommodation, the investigator thought that if NFU could source similar accommodation to Miss G's home for the duration of the repairs then this was reasonable. And in regards to the mould/moth damaged clothing raised, he thought that NFU was responsible for this part of the claim, but felt that they didn't automatically need to settle this element in cash or by way of replacement - if suitable cleaning arrangements can be made.

He was of the opinion that NFU were not required to pay Miss G for medical bills she incurred, nor for an iPhone, a broken wall lamp, a toilet seat and tights. He thought the £1,500 compensation paid by NFU for the poor customer service received and £12,500 offered for disturbance allowance was fair.

Both Miss G and NFU disagreed with certain aspects of what the investigator said. So the complaint was passed to me to make a decision.

After reviewing the case, I issued a provisional decision on 31 July 2019. In the provisional decision I explained that I intended to uphold the complaint in part and I wrote:

"My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I intend to uphold the complaint in part although I've reached a different conclusion to our investigator - I will explain why.

£150,000 award limit

There is a financial limit over which the Financial Ombudsman Service has no power to make a legally binding award. In this complaint the award limit that applies is £150,000.

NFU says there are elements of the claim which have been settled with Miss G whilst the complaint has been with the ombudsman service. NFU believes this should be taken into account when considering the total award which can be made by our service. Effectively NFU doesn't think it would be fair for us to make an award of £150,000 on top of what's already been paid whilst the complaint has been with us.

They say this is because it would disadvantage an insurer who is trying to be pragmatic and fair in attempting to settle a claim once it has been referred to the ombudsman service. NFU goes on to say the payments made are more than what NFU thinks is reasonable, and were made in an attempt to resolve the matter. And they believe it would be inequitable and inappropriate for the Financial Ombudsman Service to disregard these interim payments which were made since they were referred to us by Miss G as part of this complaint.

In this particular case I can make a binding money award of up to £150,000. The award limit here applies only to the parts of the claim in dispute and not to the parts of the claim that NFU have already settled with Miss G. NFU had the choice of whether or not to make any offers to Miss G. And it isn't for me to consider these.

NFU says Miss G told them our service recommended they should look to settle some elements of the claim where possible, so those payments made should now be factored into the overall award limit. But I have not seen any evidence to show that this service has been actively involved in any of the negotiations, and it was for Miss G and NFU to agree or disagree on any final settlements that were made between them.

I will now address the remaining parts of Miss G's claim which are still in dispute, and the £150,000 award limit will apply to what I've outlined below.

Medical bills

Miss G believes NFU should reimburse her an amount of £3,603.23 for the medical expenses she incurred for herself and her family. She has explained she needed to seek additional medical assistance during the claim because of the mould and dust she and her family were exposed to whilst NFU was dealing with the claim. Miss G has highlighted herself and her family member have severe allergies to mould and dust – and this was affected by NFU's failure to control the amount of dust and mould she and her family were exposed to as a result of the claim. She believes NFU should've allowed her family to move into alternative accommodation sooner than they did.

Having looked at the information provided, I can see both parties agreed that NFU would renovate the outbuilding so that Miss G and her family could live onsite while the reinstatement works were being completed – but I think NFU caused approximately a three month delay at the beginning of the claim while they were looking into whether Miss G was underinsured. During this time, water was seeping into the ceiling and walls causing further damage and mould, and Miss G and her family lived in the house. Considering Miss G, from the beginning of the claim, was telling NFU that she was very allergic to dust and mould, I think most likely they should've arranged alternative accommodation for her and her family sooner.

Miss G has provided a letter from her doctor and evidence of visits to the doctor after the escape of water. The letter says that Miss G 'is extremely allergic to mould and dust. Living in this circumstance caused her to develop allergic reactions never previously experienced and unfortunately now require her to be treated daily with medication to keep her symptoms at bay.' It goes on to say that, a family member living with Miss G developed various allergic reactions not present previously. 'Some of the allergic reactions were so severe that' this person 'developed angio-oedema, a potentially life threatening condition.'

The doctor then goes on to say that because of this another doctor referred Miss G and her family member to see an allergist, and it was found that both of them were in a heightened allergic state despite neither having these reactions previously. The doctor in the letter goes on to say that 'Looking at the medical history of' Miss G 'and her' family 'I can factually state that they were more unwell from August 2017 than they ever had been before, with more visits to my predecessor than ever before.'

Given the information from the doctor, I'm satisfied that Miss G and her family did experience medical problems as a result of the dust and mould in the property.

For me to ask NFU to pay Miss G's full medical expenses I would have to be persuaded, on balance, that all of the medical expenses for the health issues experienced by Miss G and her family were likely to have been incurred as a direct result of the way NFU handled her

claim. Miss G's doctor does mention there were more visits after the claim than before, but without Miss G providing us with further evidence outlining the frequency of visits and treatments during the claim compared to before, I can't say that NFU should reimburse her for all the medical expenses.

Also, I agree with NFU that Miss G's own builder's failure to take adequate dust prevention measures prior to removing the wall and ceiling in the study most likely contributed to the dust Miss G and her family would've been exposed to at that time. Taking this into consideration, and without any further medical evidence, I think it is fair and reasonable that NFU only pays Miss G for half of the medical expenses to take into account their part in the problem – a total of £1,801.62 plus interest at 8% simple per year from the date of loss to the date of settlement.

Clothing and rug damaged by paint in the cloakroom

Miss G says NFU's contractors damaged about £15,231 of her clothing and a £141.04 rug when cleaning their painting tools in her cloakroom. She says she raised this with NFU in the third week of December 2017 and in January 2018 she was told to put the clothing in a bag at the front of the house, which she did.

NFU say Miss G didn't tell them about the clothes. They have provided a statement from the contractor which says they were authorised to use the cloakroom to wash their brushes. They also say the paint used by them was water based so it was washable, meaning it would have been possible to clean the clothes to put them back to their pre-damage condition.

NFU says it's not fair to conclude that damage was caused to Miss G's clothing and rug just because their builders used paint in the house, and there is no causal link between these two events.

So I need to weigh up the statement from NFU's contractor with Miss G's testimony. I need to decide what I think is most likely to have happened.

NFU's contractor in his statement confirms the painters were using that room to clean their brushes for approximately a month. NFU's contractor also says that late in December 2017, Miss G pointed out some splashes to him in the cloakroom. The contractor goes on to say there was no mention of damaged clothing and the damage discussed was only about paint and chips on the vanity unit, which he says they could've polished out. However, they discussed that they would sort it out in the New Year.

But, from the pictures provided by Miss G, I can see the damage caused to the clothing and the rug consists of what appear to me to be building material spillages/splatter/drip/flick marks. This damage looks to me like the same type of damage that is found on the vanity unit – for which NFU's contractors accept responsibility.

I find these pictures persuasive. Having taken all of the evidence into consideration, I think it's more likely than not that the damage caused to the clothes and rug was caused by NFU's contractors who were using the cloakroom to clean their tools.

NFU says, if the clothes are deemed to be a part of the claim, they were denied the opportunity to attempt to clean them at a much lower price than the cost of having them replaced. Miss G says she was asked by NFU to bag the clothing up and leave it out in the

front of the house in early January 2018 during NFU's visit to the house. NFU says this didn't happen.

But, overall, I think NFU did have an opportunity to look at the clothes. I say this because after Miss G said she spoke to the contractors about the damage in December 2017 she followed this conversation up with an email to NFU on the same day. In that email she talks about how the painters were using her cloakroom to wash their paint filled rollers and brushes and how the cabinet and items on top of it are covered in paint. She then goes on to talk about the rug and paint on her clothes, and in the email she says she made NFU's contractor aware of this. At this point I'm satisfied that NFU should have made arrangements to inspect the clothes, to move this matter forward. But, regardless of whether Miss G was told to bag the clothes or not, NFU didn't do this.

If the clothes were bagged and left in front of the house in January 2018, as I'm satisfied from Miss G's testimony that they were, this means NFU had the opportunity to look at the damaged clothes on more than one occasion – first in December 2017 and then later at the beginning of January 2018. NFU says they would've wanted an opportunity to wash the clothes first so most likely I think they did ask her to bag the clothes. It's not clear whether these were collected by NFU or their contractors. And if not, why this didn't happen. But, I think NFU did have the opportunity to view and attempt to wash the clothes, and they didn't do this. The clothes aren't available now. So, I've needed to think about how NFU should move this forward, to ensure Miss G is compensated for her loss.

Overall taking all the above into consideration I think NFU should pay Miss G for the replacement of these items due to their contractors' negligence. But a reduction in value has to be taken into consideration because Miss G would've had some use of these items and some items from the pictures I've seen show signs of wear and tear. Miss G provided a list and pictures of the 11 items that were damaged by paint. Where I can see from the pictures that an item was as good as new, I think it is fair and reasonable for NFU to pay full value for those items. These include item number 8, 10 and 11 for a total of £2,609.04.

Where the pictures are not as clear, due to the quality or viewpoint of the picture, it is difficult to determine how much depreciation should be contributed to those specific items. So I think that most reasonable outcome is for NFU to pay half of the value listed for those items because some of these might have been in perfect condition while other items might have been at the end of their life span. 50% of the listed value provided by Miss G for those items comes to £6,381.50. If either party thinks they have a more reasonable way to calculate this loss or further evidence that would help with quantifying the above they should let me know.

Otherwise, I think it is fair and reasonable that together NFU should pay Miss G a total of £8,990.54 for the clothing and rug damaged by paint, plus interest on this amount at 8% simple per year from the date of the loss to the date of settlement.

Mould/moth damaged clothing:

Miss G and NFU haven't been able to reach agreement on 95 items of clothing worth £112,272.92, which were stored in one of the rooms affected by the escape of water. The clothing in question was in boxes and bags when it was moved into the dining room following Miss G finding the escape of water in the study. Rugs/blankets were brought in from the outbuilding and used to cover and protect the furniture and clothing.

It isn't clear if it was Miss G's employees or NFU's contractors who originally brought the blankets over from the outbuilding. These rugs/blankets were later found to contain moth eggs/larvae. Also, at the time the clothes were moved in to the dining room, it was not known that this room too would be affected by the escape of water. When it was later discovered that the escape of water had also affected the dining room wall, NFU brought in driers and fans which Miss G says eventually caused the growth of mould and mildew that affected the clothes and her furniture.

NFU says Miss G's policy explicitly excludes both moth and mould damage. They say that when the claim for moth damage was raised they had the causal chain reviewed by a law firm, which concluded that based on the facts the proximate cause of the damage was not the escape of water. I think the causation arguments presented by NFU's law firm need to be explored in my decision.

*NFU is arguing that based on *Leyland Shipping Company v. Norwich Union Fire insurance Society* [1917] 1 K.B. 873 ('Leyland'), an insured peril must be the 'proximate' cause of the loss claimed under the policy. They argue that in *Wayne Tank and Pump Co. Ltd. v Employers Liability Assurance Corporation Ltd.* [1974] Q.B. 57 the court interpreted 'proximate' as the predominant, effective cause which is determined by applying a common-sense approach, but even if there are two causes that are the proximate cause in equal or near equal measure, one being excepted and the other covered under the policy, the exception takes priority and the insured cannot recover. When determining which cause is the most predominant and effective, they say courts have regard to the extent and effect of its role in the loss, and not by how close it was in time to that damage as seen in the case of *Leyland*. So NFU say that Miss G has to establish that the moth-damaged clothing was proximately caused by the incident – here, the escape of water.*

NFU goes on to say that the 'but for' test can be useful in identifying potential causes but it is not as useful when distinguishing the proximate cause from, say, a remote cause of the damage. So NFU is saying that the argument 'but for' the escape of water the damage would not have occurred, is not enough to establish the escape of water as the proximate cause.

NFU considers that the escape of water was the remote cause and the moth-infestation is the proximate cause of the damage to the clothing because the clothes were damaged by moths and not by water ingress or damp. The damage required the introduction of the rugs/blankets which was sufficiently separate to the escape of water. NFU says the drying-out works could've accelerated or exacerbated the moth infestation, but it still would not make the escape of water a proximate cause of the damage.

NFU also says it can further be argued that it took the environment created by the incident, acting with the presence of moth larvae, to cause the damage to the clothes. But even then, unless one cause is clearly more decisive than the other as the proximate cause, it should be accepted that there are two equally dominant causes. One of these would be covered by the policy as the insured event – the escape of water. And the other would be covered by the exclusion for moth and mould damage in the policy. And if this was the case NFU say they could rely upon the exclusion in the policy because, according to case law, exception takes priority over the general words of the policy.

I understand NFU's legal arguments about proximate cause and the case law they say applies and I've had regard to this. However, I'm not bound to strictly follow the law so I've also thought about what I think the fair and reasonable outcome is in the circumstances of this claim.

I've taken into account the fact that the clothes were not only affected by moths, as some of them were also affected by mould.

NFU says that when this claim was first initiated as one for moth damage, they concluded that the proximate cause was not the escape of water so they issued a repudiation of this element of the claim to Miss G, and that following this she changed the claim to clothes having been affected by moth and/or mould damage. However, I've seen an email Miss G sent to NFU at the end of September 2017 in which she says that the dining room 'is now full of mould and mildew, including my possessions that are stored in there.' So I don't think it's fair for NFU to say it was only moth and not mould damage that was brought to their attention at that time.

In addition, I've thought about whether it's fair for NFU to apply the causation argument to exclude the whole claim, and I don't think it is. This is because all 95 items should reasonably be considered as 95 individual items claimed for, rather than 95 parts of one overall claim. Some of the units of clothing are likely to have been damaged by mould, some by moths and some by both moths and mould. Others might have not been damaged at all – I'll explain below.

NFU arranged for an expert to examine some of the clothing at the beginning of May 2018. A total of 39 of the 95 items were examined. NFU says there is no actual mould growth evident on the clothing and the spores present are at a level that could be cleaned with standard washing or dry cleaning, and not unusual for the living environment of the property where Miss G resides.

But I've reviewed the report and it doesn't indicate whether washing or dry cleaning would remove the spores from the items of clothing. The report shows approximately a quarter of the 39 items tested had at least 200 plus spores colony forming units per 100 cm². It seems the expert refers to any units that are 200 colony forming units and above as high. Also the expert says that only five of the 39 items had no colony forming units at all. Based on this information I can't say that it is more likely than not that washing or dry cleaning would get rid of the mould spores and, considering Miss G's and her family member's medical conditions, I think it is reasonable to conclude the higher count items would likely have a negative impact on their health.

NFU also says the report shows some items had stains/marks not consistent with mould growth but more consistent with general wear and being kept in a pet-friendly environment. NFU says this is inconsistent with Miss G advising that her housekeeper was steaming and cleaning clothing items three hours a day five days a week to prevent mould, which they say would seem at odds with the condition of the clothing observed by forensic experts. However, I'm not satisfied that the presence of animal hair on some of the items of clothing means that Miss G doesn't take care in trying to prevent mould.

Turning to the moth damage, the expert's report says a large number of the items inspected had irregular shaped holes consistent with damage from moth larvae. It seems approximately 60% of the 39 items that were tested have this damage. So once again I don't think the moth causation argument could be reasonably applied to all 95 items.

NFU says there was evidence of pre-existing moth damage on the clothing, as demonstrated by the stitching and dry cleaning labels. NFU says this contradicts what Miss G told them in December 2017 – that she has never had previous problems with moths and/or mould. I can

see from the expert's report that there was only one item of clothing mentioned that had a dry cleaning label attached which pre-dated the water leaks. The report says this item had a hand-written label that said "holes all over". However I haven't seen any persuasive evidence which would lead me to conclude it's more likely than not that these holes were created by moths. And even if I were to accept that this damage to a single item was caused by moths, it doesn't seem fair or reasonable to me to automatically conclude that the 94 other items of clothing were similarly moth damaged.

Overall, it is difficult to establish with certainty which items were damaged by mould, which were damaged by moths and which were damaged by both or neither of the two. I say this because the expert commissioned by NFU only examined 39 of the 95 items. I don't think an examination of 41% of the items necessarily provides an accurate reflection of the condition of the remaining 59%. I've also borne in mind that the items were in storage for approximately seven months before they were examined. I think it's likely some cross contamination could've occurred between the moth and mould damage during this time. I say that because the expert report mentions the potential for cross-contamination. NFU say they would be happy for another independent forensic expert to examine the clothing and provide comment, but considering how long everything has now been stored together and what the expert has said about a potential for cross contamination, I think a new report would be of limited value.

Another reason why I don't think it is fair and reasonable to apply the moth and/or mould exclusion of Miss G's policy is because NFU at the beginning caused approximately three months' delay while they were looking into whether Miss G was underinsured. They were negligent by not attending to the leak sooner. I think most likely if this delay didn't occur, the other leaks would've been found earlier, and most likely the escape of water wouldn't have spread to the dining room where the 95 items of clothing were located. So considering this, I don't think it is reasonable to say that the moth and/or mould exclusions of the policy applies.

NFU also says that damaged clothing was not brought to their attention for some time and they were not aware of its location or value. They go on to say if there was serious concern that the clothing was at risk of being damaged then this element of the claim should've been raised sooner. Miss G says bags/boxes of clothing were discovered later because they were hidden from view behind furniture that NFU had moved and covered over in the dining room. Cushions and other items had been piled on them so that NFU had more space to do work. The boxes were only later discovered because mould developed on some of the furniture.

I've seen the email Miss G sent to NFU at the end of September 2017, when she told NFU she'd discovered items in the dining room which were affected by mould. NFU waited until November 2017 to pick up the clothing. However I also think Miss G could reasonably have asked someone else to go into the room where the clothes were to check on their condition from time to time or have someone else remove the items if she wasn't able to do that herself because of her mould allergies.

In summary:

- I don't think it's fair and reasonable for NFU to rely on the principles set out in the case-law they have presented to exclude this element of the claim in its entirety. I don't think it's possible to fairly quantify exactly how much damage was caused by mould and/or moths and to which specific items. Also cross contamination most likely occurred before and after NFU's expert examined the items.*

- *Also I don't think it is fair and reasonable to apply the moth and/or mould exclusions of the policy because had it not been for NFU's negligence in causing approximately three months' delay most likely the other leaks would've been found sooner, and the escape of water wouldn't have spread to the dining room where the clothes were located.*
- *NFU should've acted sooner to prevent the possibility of some of the damage getting worse but Miss G could've mitigated her losses too.*
- *There is no clear evidence to show the quality and condition of each item before and after being placed in the dining room, but a reduction in value has to be taken into consideration. This is because Miss G would've had some use of them items and some items most likely had signs of wear and tear before they were placed in the dining room.*

Overall taking the above into consideration and in the absence of a more accurate means of quantifying the cause of the damage to each individual item, I think it would be fair and reasonable for NFU to pay half of the amount claimed for. So NFU should pay Miss G £56,136.46 for the mould/moth damaged clothing plus 8% simple interest from the date of loss to the date of settlement.

Alternative accommodation

Miss G's property still needs work carried out to it. NFU says they are willing to arrange suitable alternative accommodation via one of their sourcing companies. This would be provided for the period of time that the insurance related works will take as scheduled by the contractor who Miss G has hired to provide the reinstatement quote for the works. NFU also said they are willing to pay costs associated in moving some reasonable items required to the alternative accommodation.

NFU says the £4,000 - £5,000 a month Airbnb estimate given by Miss G (which they have not seen and therefore don't know what the proposed property's specifications are) appears excessive. NFU have provided a list of four homes that are all four or five bedroom detached houses within 15 miles of Miss G's location. The prices for these per month range from £1,500 to £1,700. Therefore, NFU thinks a reasonable alternative accommodation cost would be approximately £8,000. Alternatively, NFU says if the properties are not acceptable to Miss G they are willing to pay her £8,000 in settlement of this part of the claim.

Miss G says her contractors will need approximately 14 weeks to complete the works plus an additional week for cleaning, airing out the premises, snagging and moving back in. She has provided our service with estimates of comparable properties to her home on Airbnb which range from approximately £4,000 to £5,000 a month. So she is of the opinion that alternative accommodation with all associated costs including horse stabling for two horses, moving fees, both to and from the alternative accommodations, and utilities will come to a total of £25,000.

Miss G's insurance policy says NFU will pay for reasonable costs of similar accommodations for her, her family and domestic pets. NFU may be able to obtain this at a cheaper cost than what Miss G has been quoted, so I think it is reasonable that NFU should be provided with the option of arranging the alternative accommodations through their sourcing companies. The property sourced for Miss G doesn't have to be exact match to her home, but NFU have to take into account that the property has at least the same amount of bedrooms as her

home and is within a reasonable distance to it. Some of the properties NFU proposed were within 15 miles. I think this distance range seems reasonable.

Also, these properties have to be pet friendly so that Miss G can move with all her domestic pets into the home including her horses. Miss G's policy defines 'DOMESTIC' as 'Relating to the private activities of YOU or YOUR FAMILY. WE do not cover any business or profession, including growing agricultural or horticultural produce, or rearing livestock for profit.', so I think it is reasonable that her horses would be included in this definition. I say this because Miss G uses them for private activities and not for business or profession, or as livestock for profit.

If NFU can't source an alternative accommodation that allows for keeping of the horses, then I think it is fair and reasonable that they pay for livery for them, as well as transport to and from the livery. Miss G will be unable to look after and/or make sure that the horses are safe while she is staying at the alternative accommodation. Also the person that looks after Miss G's pets will most likely be attending to her other animals at the alternative accommodation, so will be unable to look after the horses at the same time.

Miss G also says she should not be responsible for the utility costs on all three houses; the alternative accommodation, her main house and the outbuilding. She says that due to the fact that the reinstatement works might be taking place during winter the outbuilding and main house will have heating on all day and night to dry out the paint/ plaster and acclimate wood as well as costs for electricity, water, internet and satellite TV stations while she is not living there. I don't think it is fair to ask NFU to pay for costs of internet and satellite TV stations. These are services Miss G should reasonably suspend in her home and get them set up in her alternative accommodations so that she doesn't incur these expenses twice.

It also seems unfair to ask NFU to cover costs of utilities for the outbuilding as the escape of water happened in the main house. Miss G would have incurred these costs whether or not there had been the escape of water in the main house. If Miss G chooses to have renovation works carried out in the outbuilding at the same time as she has reinstatement work done on her main home she will need to cover those expenses herself. But I do think that, upon receipt of suitable evidence, it is reasonable for NFU to refund Miss G the expenses she will incur during the reinstatement works for electricity, heat and water at her main house.

NFU should arrange suitable alternative accommodation in line with the guidelines I have set out above. If Miss G would rather source out her own alternative accommodations, then NFU should pay Miss G what it would've cost them to arrange the alternative accommodations in line with the guidelines I set out above. Miss G should indicate in her response to this provisional decision which option she proposes to take.

Disturbance allowance

NFU offered to pay Miss G £12,500 as disturbance allowance for being out of her home. Disturbance allowance is intended to compensate an insured for costs over and above those they would usually incur by staying at home rather than staying in alternative accommodation or to cover expenses if the policyholder is re-housed somewhere that causes them to incur extra costs. An example of this might be extra food expenses if, for example, the alternative accommodation has no kitchen facilities and therefore a policyholder couldn't store or cook food. In these types of situations we wouldn't expect the insurer to cover the entire cost of food – as the policyholder would always need to have paid

for food - but we would expect the insurer to make a reasonable contribution to recognise any additional costs the policyholder has through payment of a disturbance allowance.

Besides the short period of time when Miss G was in a caravan, she stayed at her property while some of the reinstatement works were taking place. She has not provided any evidence to show that her costs of living exceeded what she would have typically spent above the £12,500; that has already been offered by NFU. Also Miss G hasn't incurred any extra travel costs as the caravan was parked on her property.

It would seem likely that Miss G's living costs during this time were fairly similar to the ones she would normally have incurred, so I don't think there are any reasonable grounds upon which to ask NFU to increase its offer. And as I've recommended that NFU should place Miss G in comparable alternative accommodation to her home during the reinstatement works, I also don't think it would be fair to ask NFU to pay any disturbance allowance for this period of time.

Christmas food

Miss G says she spent £2,000 on Christmas food for 14 people, as she had guests coming from abroad. As the reinstatement work was not completed on the main house she had to cancel her guests and I understand that some of the food was spoiled. NFU have offered £1,000 to settle this part of the claim, as a gesture of goodwill.

The investigator thought it would be fair for NFU to pay £1,428.58 to reflect the fact that four out of 14 individuals still used some of the food. NFU disagreed with this as they said they had never received any evidence about this aspect of the claim despite requesting this from Miss G.

I also have not seen any evidence of the value of the food Miss G is claiming for. So overall, I think NFU's offer of £1,000 is fair and reasonable in the circumstances. In the absence of any evidence of the value of the food bought and lost, I wouldn't have been likely to recommend that NFU should make any payment to Miss G for this aspect of her claim.

Utility costs

The investigator was of the opinion that NFU should pay Miss G £250 for utility costs plus 8% simple interest from the date the drying contractors removed their equipment to the date settlement is paid.

NFU have accepted this and, as both sides are in agreement, I don't think it's necessary to make a finding on this point, but I would like to clarify that NFU should add 8% simple interest to this payment from the time Miss G incurred the costs from the date of loss to the date of settlement.

Damaged mobile phone

Miss G has claimed approximately £550 for a mobile phone replacement for one of her employees. The investigator didn't think NFU should pay for the mobile phone because it was damaged during clean up and wasn't part of the contents in the room when the escape of water occurred.

I agree with the investigator that the damage to the phone wasn't a direct result of the escape of water, as there is no evidence that shows that it was a part of the contents in the room that were damaged by the escape of water. Therefore I don't think it would be fair to ask NFU to cover it as part of the claim. If Miss G thinks the damaged phone might be covered under a different section of her insurance policy then she should raise a separate claim for this with NFU.

Damaged bronze tap in the cloakroom

Miss G says contractors damaged a bronze tap in her cloakroom when they were cleaning their tools.

NFU disputes this. They say the tap could've been damaged by Miss G's workman or one of her employees and that weeks after the contractors left, one of NFU's agents attended the site and confirmed the tap was working fine and still in one piece.

Miss G says, originally she didn't know the tap was damaged but was later told by one of her employees, after the contractors left, the tap handle was off. Miss G's employee then screwed the tap handle back on so it was working again. But later when Miss G went to use the tap she says the handle irreparably broke. She also adds that the tap was corroded and covered in paint.

For me to uphold this part of the complaint, I have to be satisfied on balance that it's likely NFU's contractors damaged the tap in the cloakroom. I've taken into account that the tap was working fine for a period of time after NFU's contractors left, there were other individuals who would've had access to the cloakroom such as Miss G's family and potentially her employees. I've also taken into account what Miss G has said about the tap being corroded. I've weighed this up against the testimony Miss G has provided but, overall, I don't think I can fairly conclude that it's most likely NFU's contractors caused the damage. So I'm not recommending NFU do anything about this element of the complaint.

Broken wall lamp/toilet seat/tights

Miss G has also claimed for a broken wall lamp, toilet seat and tights.

NFU says they took lamps down and stored them in one of Miss G's room but they didn't fit the lamps back onto the wall as there was other touching up to do first. They says as far as they are concerned, right before Christmas 2017, the wall was left without the lamps and later pictures show one of the lamps had been reinstalled onto the wall. So NFU says another person must have refitted one of the lamps after they left. NFU also say they aren't responsible for any damage to the main house toilet seat and they are unsure how this damage was sustained.

Miss G says the toilet seat was new and it fell off while the works were taking place. She says the wall lamp was damaged but I haven't seen any other evidence on this point.

I don't think there is enough evidence for me to fairly say it's likely NFU is responsible for the damage to the lamp and the toilet seat. Just because something was damaged around the time the NFU's contractors were doing work doesn't automatically mean it is more likely than not that NFU caused the damage. NFU contractors were in the house around this time but so were other individuals such as Miss G, her employees and family members.

I understand Miss G also had an expensive pair of tights ruined during cleaning. But I think this is an indirect loss which it wouldn't be fair to hold NFU responsible for considering the damage is not as a result of their actions or lack of.

Service and compensation

Miss G says she experienced many service issues when dealing with NFU, including making sure the contractors' errors were rectified and this also included chasing them on numerous occasions. I'm also aware that at the beginning of the claim there was approximately three months of delay while NFU was looking into whether Miss G was underinsured.

I think the whole situation caused Miss G a substantial amount of distress and inconvenience which she described in correspondence to us, but which is also evident from email and telephone calls she had with NFU.

However, I can also see NFU were making what I think were genuine attempts at resolving issues raised by Miss G and have paid her £1,500 in recognition of the distress and inconvenience she suffered. I realise Miss G experienced at times unnecessary stress and anxiety during the claim when dealing with NFU and their agents. But I think £1,500 compensation is a fair reflection of the upset that has been caused to Miss G. So whilst I realise that my decision will come as a disappointment to Miss G, I'm not asking NFU to increase their compensation award.

£2,000 payment over Easter

NFU says £2,000 was offered as disturbance allowance because Miss G was concerned that her children would be home for the 2018 Easter holidays and it would be difficult to live in the property due to the ongoing issues. NFU says alternative accommodation was discussed, however Miss G didn't want this so a further disturbance allowance payment to cover the Easter period when her children were off school was offered and accepted. There was no mention of this being a goodwill gesture and it was offered as part of the disturbance allowance claim as it was being paid instead of alternative accommodation.

Miss G says she received the £2,000 as a gesture of goodwill towards a holiday for her family as a set of taps NFU had installed exploded due to improper installation and knocked out electrics and soaked ceilings and walls.

Even if this money was paid to Miss G as a gesture of goodwill by NFU, I would consider this to be a compensatory payment. Therefore, whether this forms part of the overall compensation for distress and inconvenience or part of the disturbance allowance which I've already addressed above, I think Miss G has been fairly compensated for the impact NFU's errors had on her. Therefore I won't be asking NFU to increase the amount of compensation they have already paid.

Cancellation of Miss G's insurance

This is the subject of a separate complaint with our service, so I won't be addressing the issue in this decision.

My provisional decision

For the reasons I've explained, I intend to uphold Miss G's complaint in part.

I will require The National Farmers' Union Mutual Insurance Society Limited to:

- *pay Miss G £1,801.62 for medical bills plus interest at 8% simple per year from the date of loss to the date of settlement;*
- *pay Miss G £8,990.54 for clothing and rug damaged by paint in the cloakroom plus interest at 8% simple per year from the date of loss to the date of settlement;*
- *pay Miss G £56,136.46 for the mould/moth damaged clothing plus 8% simple interest from the date of loss to the date of settlement;*
- *arrange suitable alternative accommodation in line with the guidelines I have set out above. If Miss G chooses to source out her own alternative accommodations, then NFU should pay Miss G what it would've cost them to arrange the alternative accommodations in line with the guidelines I set out above. Miss G should indicate in her response to this provisional decision which option she proposes to take;*
- *refund Miss G the expenses she incurs for electricity, heat and water at the main house during the reinstatement works, on the production of reasonable evidence of these costs from Miss G;*
- *pay Miss G £250 for utility costs and add 8% simple interest to this payment from date of loss to the date of settlement;"*

I've asked both parties to provide me with any additional information they wanted me to consider by 14 August 2019. Both NFU and Miss G replied agreeing with some aspects and disagreeing with others, so, for ease of reference, I will address all of the points of contention in my findings below.

My findings

I've considered all the available evidence and arguments – including the additional and most recent comments made - to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

£150,000 award limit

After my provisional decision, NFU said that the £150,000 limit should not apply to the claim payments agreed with Miss G after her case was referred to our service. NFU say that Miss G informed them that our service had advised that there needs to be continued claim progression to show an attempt to settle some of the areas in dispute, and NFU say otherwise they wouldn't have made a further payment of £89,335 in June 2018, or considered a contribution to the spoiled Christmas food at all. NFU say that instead they would've waited for our service to issue a final outcome before making any further payments.

NFU have also referred to discussions they had with our investigator on 9 July 2018, but these would not even be relevant as the payment NFU made to Miss G was before this date; in June 2018.

But as said in my provisional decision, NFU had the choice of whether or not to make any offers to Miss G, and it isn't for me to consider these. Our service can't be responsible for what Miss G did or didn't tell NFU. Also, it was up to NFU to make their own decisions on whether to settle or not to settle with Miss G on certain aspects of the complaint.

8% simple interest payment

NFU have also told us that they think applying interest up until 31 December 2018 is fair and reasonable and from there on NFU think that this service should contribute towards this payment. They say they appreciate the time it takes for a case as complex as this to be reviewed, however, they believe that our service has caused some unnecessary delays. However, I think it is fair and reasonable that NFU pay the interest to take into account that they should've handled the matter differently when dealing with the claim.

Medical bills

Miss G has provided another letter from her doctor, which states that prior to 2018 her and her family members' visits have been sporadic at best and have increased since then.

Following my provisional decision, NFU agreed to pay Miss G half of the medical bills – coming to a total of £1,801.62. They accept that Miss G has serious allergy issues and this have been made worse by the escape of water, and their actions when dealing with the claim. But, they have also reviewed the recent doctor's letter and said that they do not feel they needed to pay more than half of these bills.

NFU said they had already made a number of large payments for the building aspect of Miss G's claim in early 2018. And this was paid to Miss G so she could put the water damage and the resulting mould problems right. So, they feels the work should have been finished by the end of 2018.

They think that further doctor referrals for Miss G and her family after this point would not have been needed in September or November of 2018, or linked to NFU's actions if the work to the property had been completed in a timely manner.

In response to this point Miss G said that the exposure to mould spores due to NFU's negligence played havoc on her family's immune systems and the effects don't just disappear immediately. So further appointments were needed after the end of 2018 and she is concerned some aspects of this condition may never fully go away now.

I sympathise with Miss G and her family, but like I mentioned in my provisional decision, I can only tell NFU to pay all the medical expenses if I was persuaded, on balance, that all of the medical expenses were likely to have been incurred as a direct result of the way NFU handled her claim. I understand that there were more visits to the doctor after the claim than before, but on balance, I'm not persuaded that these were all as a direct result of the way NFU handled the claim. Miss G did have a long term pre-existing medical condition and Miss G's own builders, who took out the plaster in the study, did some of the work in the house, which would've contributed to some of the dust exposure.

I understand that Miss G says that her builder did take necessary precautions. She says he tented off the necessary areas, used plastic to cover floors and ceilings where needed, and

used the French doors to the outside for removal of any materials. Miss G says that he also had an industrial vacuum and used it often.

But Miss G did also say that her house is almost 200 years old with ceilings and walls that were lathe and plaster, and that this dust is extremely fine and is very hard to fully contain. And I'm aware Miss G was having some separate renovations works done, which were not part of the claim. So this would likely have led to some of the dust generated too, and may have also exacerbated the familys' allergy problems.

She says that she needed professional cleaning equipment and air purification machines to clear the dust and to stop it from escaping into the house. She says that she had asked NFU for this on numerous occasions, but that also means that when her builder was doing the work he didn't have such equipment either. And I agree NFU should've thought about this and they didn't. But Miss G did suffer from a long term condition, which did result in sporadic visits before the claim. So, I do think it's possible Miss G and her family would have needed to visit the doctor sometimes, regardless of the claim made. So I think it is fair and reasonable that NFU only pay Miss G for half of the medical expenses to take into account their part in the problem. NFU should pay Miss G a total of £1,801.62 plus interest at 8% simple per year from the date of payment.

Clothing and rug damaged by paint in the cloakroom

Following my provisional decision, NFU said that in interest of settling matters in the most amicable way, they agree with the way in which I have calculated how much they needed to pay Miss G for this part of the complaint. So they deemed the £8,990.54 a reasonable amount to pay Miss G for the paint-damaged clothing and the rug.

Miss G disagreed. She has provided a significant amount of receipts for clothes she has already replaced with brand new items and she feels she should be getting the full value of these back. She says this is because her insurance policy covers her for the full replacement value of all damaged items and any reduction for wear and tear does not apply in this instance.

The damage caused to the clothing and rug is due to NFU's mistakes while they were dealing with the escape of water claim and generally, when we are looking at something NFU have done wrong, in terms of damaging items that were not part of the initial loss, we look outside of the terms of the insurance policy. We're looking to ensure that the consumer is put back in the position she would have been. Like I've said in my provisional decision Miss G would've had some use of these items prior to the loss and the pictures provided show items with some signs of wear and tear.

Miss G has also said that NFU paid out replacement cost for all other contents. I understand that, but it would be for NFU to decide to do that or not. I have to take the condition of the items into consideration; thus, in this instance, wear and tear is relevant. Even though NFU previously paid out full replacement costs based on new items, it doesn't mean that I can now ask them to do so on remaining parts of this claim. And it wouldn't be fair for Miss G to get brand new ones, as that wasn't what she had before based on the pictures I've seen.

Overall taking everything into consideration my decision remains the same. NFU should pay Miss G £8,990.54 for clothing and rug damaged by paint in the cloakroom plus interest at 8% simple per year from the date of loss to the date of settlement.

Mould/moth damaged clothing:

Following my provisional decision, NFU agreed to pay Miss G £56,136.46 for the mould/moth damaged clothing to try and bring the matter to a conclusion. But they wish to raise that they didn't necessarily agree with the considerations that I've made in my provisional decision. They said that the way I reached my decision is not consistent with how insurance law is applied. And that they should be able to apply an exclusion on the policy that means mould and moth damage isn't covered.

I explained my thoughts on this in my provisional decision, and these remain the same, for the same reasons. And as NFU are willing to pay the £56,136.46 to Miss G to bring the matter to a conclusion I don't need to explore these any further.

Miss G disagreed with my findings and provided a large amount of evidence to show that it will cost her a lot more to replace the damaged clothing. She has provided receipts to show how much it has already cost her to purchase replacements of some of the items that were damaged.

The main point she has been making is that she has a high value bespoke policy that provides a replacement value and a deduction for wear and tear on contents was not applicable to her policy. However, as I mentioned above and in my provisional decision, the damage that was caused is due to NFU's mistakes while they were dealing with the escape of water claim. So if NFU have done wrong, in terms of damaging items that were not part of the initial loss, I need to look outside of the terms of the insurance policy.

I have to make sure Miss G is put back in the position she would've been. Like I've said in my provisional decision Miss G would've had some use of these items and some items from the pictures show signs of wear and tear. Also in the provisional decision, I said that in the absence of a more accurate means of quantifying the cause of the damage to each individual item, I think it would be fair and reasonable for NFU to pay half of the amount claimed for. This wasn't just because of the wear and tear aspect. It was also due to the fact that Miss G should've acted sooner to prevent the possibility of some of the damage getting worse. I know Miss G says that NFU should've acted sooner, and I agree with her, but she could've mitigated her losses too.

Miss G thinks that she has mitigated her losses by continually telling NFU, since August 2017 that she believed the dining room was affected by the escape of water and that the items should've been moved into storage. Miss G said she didn't move the items herself because she says she was told by NFU just to leave the boxes as they were; and she was afraid to move them so she didn't prejudice her claim. She also told us that she was told not to go into the room, as the air quality was detrimental to health.

But, on another occasion, I can see that she told us that one of her employees used to go into the room a couple times a day to empty the water from the humidifiers. Also, Miss G has told us that one of her employees did remove one bag in September 2017 which she determined to be undamaged clothing. But she says that she had told the NFU adjuster that she had taken this step at the time. So, I think, she could've done the same with the other items in that room.

Miss G also told us that her employee did go into that room to check on the clothing/contents and every time after these checks Miss G wrote to NFU and told them about the conditions

of the room and that the contents were further degrading. So based on this and the above, I think most likely Miss G could've mitigated her losses.

Miss G also has told us that, in all practicality, she had nowhere to move the clothing/contents that had mould spores and smelled of mildew. She says they couldn't be moved anywhere inside the home due to the mould spores and her family's allergies. She says that they couldn't be moved outside and that she couldn't afford a storage unit. But I think that Miss G's could've asked her employee to go through the clothing and pick the items that were not damaged and moved those out of the room just like she did with one of the bags mentioned above.

Overall, taking everything into consideration my decision remains the same. NFU should pay Miss G £56,136.46 for the mould/moth damaged clothing plus 8% simple interest from the date of loss to the date of settlement.

Alternative accommodation and disturbance allowance

After my provisional decision, NFU proposed a different way to settle the alternative accommodation and the disturbance allowance. They made Miss G a total cash settlement offer of £20,000 for the alternative accommodation and the disturbance allowance of her claim. Miss G has accepted this offer, so there is nothing for me to comment on this part.

In my provisional decision, I said that upon receipt of suitable evidence, it is reasonable for NFU to refund Miss G the expenses she will incur during the reinstatement works for electricity, heat and water at her main house. NFU have agreed to pay these utility bills for the main house in addition to the £20,000, but said they will require Miss G to provide evidence of the cost incurred throughout the rectification for these services. But Miss G asked if NFU would be willing to pay her £600 to settle this part of her claim without her having to provide this further evidence. NFU have agreed to pay the £600 in addition to the £20,000 as a full and final settlement so there is nothing for me to comment on this part.

Christmas food

After my provisional decision Miss G provided some receipts for the food. I have shared these with NFU who have said that, after reviewing the receipts and the details provided, they remain satisfied that their contribution of £1,000 is more than fair and reasonable.

NFU have said that numerous items detailed on the receipts are not relating to food, and even though Miss G has not provided close up pictures of the entire M&S receipt or an itemised list of the Meridian Meats receipt, it is clear from what is visible at the top and bottom of the M&S receipt that a lot of these items would not be perishable. NFU says that the same goes for receipts from the butchers and fishmongers as there are several items regarding hardware/appliances and items that could be kept as they had longer life expectancy.

In my provisional decision, I said that I have not seen any evidence of the value of the food Miss G is claiming for and that I thought that £1,000 is fair and reasonable considering there was absence of evidence of the value of the food bought and lost. My position has not changed on this because even though Miss G provided some receipts, these are inconclusive.

I know Miss G says that the total spent was over £2,200, so she took off £200 for any items that were not food related, including carrier bags at the top of the M&S receipt and only claimed for £2,000. But the evidence doesn't clearly show all the items that were bought, and there is no evidence of which items actually were lost versus which ones were salvaged. So I still think NFU's offer of £1,000 is fair and reasonable in the circumstances.

Total amount NFU registered on the CUE database

Miss G has said that there may be an issue with the total amount NFU registered on the CUE database for her claim. If Miss G would like this issue looked into, she will first need to raise this with NFU.

Other

There are other points in my provisional decision that have not been contended by either party so my findings on those remain the same.

My final decision

For the reasons I've explained, I uphold Miss G's complaint in part.

The National Farmers' Union Mutual Insurance Society Limited should:

- pay Miss G £1,801.62 for medical bills plus interest at 8% simple per year from the date of payment;
- pay Miss G £8,990.54 for clothing and rug damaged by paint in the cloakroom plus interest at 8% simple per year from the date of loss to the date of settlement;
- pay Miss G £56,136.46 for the mould/moth damaged clothing plus 8% simple interest from the date of loss to the date of settlement;
- pay Miss G £20,000 for the alternative accommodation and the disturbance allowance;
- pay Miss G £600 to cover the expenses she will incur during the reinstatement works for electricity, heat and water at her main house;
- pay Miss G £250 for utility costs and add 8% simple interest to this payment from date of loss to the date of settlement;

*Income tax may be payable on any interest paid. If The National Farmers' Union Mutual Insurance Society Limited deducts income tax from the interest they should tell Miss G how much has been taken off.

The National Farmers' Union Mutual Insurance Society Limited should give Miss G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 17 November 2019.

Mike Kozbial
Ombudsman