

complaint

Mr S, who is a commercial property developer, has complained about The National Farmers' Union Mutual Insurance Society Limited (NFU). He believes it set the value his let property was to be insured for and is responsible for the property being under-insured. He also believes that a promise was made, but not kept, to not penalise him for the under-insurance.

background

Mrs S called NFU to arrange cover on behalf of Mr S. A policy was put in place and new business documents were sent out. The policy said the property in question was insured for £297,850, this being what it would cost to re-build it if it were completely destroyed. The documents explained that this sum must be correct and sufficient to cover all the costs of re-building the property and it must take into account outbuildings.

At renewal the next year the insured value increased to £303,807. There was then a fire that affected the outbuildings at the property. NFU sent a loss adjuster to assess the damage and he began looking at the value the property had been insured for. He felt it might be insufficient. Initial enquiries suggested it would cost around £320,000 to reinstate the property and NFU told Mr S that, at this value, he shouldn't be concerned; no reduction to his claim would be made in respect of under-insurance.

The loss adjuster then emailed Mr S asking for some cost details. He explained that the cost of re-building the property needed to be investigated further in order to fully assess whether the policy value was sufficient. Once those enquiries were complete the loss adjuster informed NFU that, including the outbuildings, it would cost £465,832.90 to re-build, which was around 56% more than the policy value. NFU said the reinstatement of the outbuildings would cost £136,521.34 and, given the 56% under-insurance it would pay £77,432.05 in settlement of the claim.

Mr S was unhappy. He told NFU that when his wife had arranged the policy the NFU representative had asked lots of questions, considered the sale documents for the property and then set the policy value. So he felt any under-insurance was NFU's fault, not his. He said this was his first let property and so neither he nor Mrs S had any idea how to work out what it would cost to re-build it. They had taken NFU's word on this and hadn't questioned it further.

Mr S also pointed out that NFU had agreed that he wouldn't be penalised for any under-insurance. That it had said it was committed to paying the claim in full as it accepted that Mr S hadn't set out to knowingly be under-insured.

Mr S queried the figures NFU had used to reach the re-build figure. He noted it was using a price of around £1,300 per square meter whereas a commonly used insurance industry calculator suggests £1,000. He also asked how a cost for reinstating the outbuildings of £150,000 had been generated as NFU hadn't explained this.

Finally Mr S told NFU that he was unhappy with the way the claim had been handled. He said the loss adjuster had been awkward and had set out to delay matters.

NFU said there was no evidence that its representative had set the policy value and that Mr S did have an obligation to check the policy documents he was sent. It said the assurance that had been given in respect of under-insurance was clearly in relation to the value remaining at around £320,000. It made no comment in respect of figures used and generated but did offer to appoint an independent valuer if Mr S wanted it to do so. It accepted that there had been some delays and poor service and offered £250 compensation.

Mr S complained to this service and the complaint was ultimately passed to me for decision. I issued a provisional decision explaining that I didn't think NFU had done anything wrong. NFU accepted my findings, Mrs S did not.

Mr S said he was unhappy that he had been referred to as a commercial property developer – he said he had renovated some farms. Mr S said it's a key fact that while NFU records all its calls it hasn't got a recording of the call Mrs S had with it, so it has no evidence to refute what Mrs S recalls having been said. Mr S noted the quotes I'd relied on that had been taken from a statement Mrs S gave to NFU about what was said. He said they had been taken out of context. He said he wanted to see a breakdown of the rebuild costs and he believed they'd been calculated in correctly. He said he wanted time to now get his own valuation and I gave him leave to do so.

The valuation Mr S obtained said:

"Because you no longer own this property I have had to look at it from the outside and I presume that its size must be in the region of 2000 square feet."; and

"In order to provide formal advice I would need to inspect and analyse the construction and measure it in detail..."; and

"...in my judgement a fair figure for insurance cover purposes back in 2016 would have been some £250,000/ 275000 (two hundred and fifty thousand pounds to two hundred and seventy five thousand pounds). This in my opinion is the level of figure that a purchaser of the bare plot would have used for assessing the viability of a house building scheme in this location."

This was sent to NFU for consideration. It pointed out:

- an inaccurate size for the property had been used (in square feet it would be 2,152);
- the method used in the valuer's judgement was incorrect; his consideration should have focused on rebuild costs not the cost to purchase a plot of land and build on it;
- it does not include any consideration of the out-buildings (their re-build cost alone was £150,000);
- this is not formal advice and is based on presumptions;
- it had previously offered, and still stood by its offer, to appoint an independent surveyor to carry out a valuation and if Mr S wanted to take up this option it would provide him with three names to select one from.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account Mr S's response to my provisional decision but what he's said doesn't make me think my initial findings should be changed.

sale and setting the value

I'm not sure why Mr S believes NFU records all of its calls – but the fact this call isn't available doesn't mean there is no evidence that NFU can fairly use to refute the argument that its representative set the re-build cost. NFU has evidence in the form of a witness statement from Mrs S setting out her recollection of the conversation. I've considered the full statement and set out what I see as the key quotes from it below. But I've taken everything that was said into account – my conclusion hasn't been made on the quoted parts in isolation from the rest. I accept that in the rest of the statement Mrs S is much more sure of what happened – that she sent sale documents to the representative and that she told her about the outhouse, for example. But Mrs S's uncertainty about the key issue of how the re-build figure was set and by whom, mean I'm not persuaded that NFU did set the figure. Mrs S's uncertainty about this was reflected by her saying to NFU:

"I can't recall discussing the re-build value.....I can't recall how the value was reached";
but

"I think [NFU's representative] suggested the figure".

It isn't that I doubt that Mr and Mrs S's believe NFU set the figure, rather that as the only evidence that they were mis-lead is their uncertain belief, I can't fairly conclude NFU did something wrong. For me to find that an insurer has mis-led a policyholder I have to be satisfied that what it is accused of *most likely* happened. Not just that it may have done.

I note what Mr and Mrs S have also said though – that they had no way of knowing what value to set or of realising the value in the policy documents received was wrong. I have to say that I'm not convinced in this respect. While I note what Mr S has said about his property developer experience, that doesn't change my view that he knows about the cost of building work. And I don't think it matters that this was a residential let property as oppose to a commercial/farm development – the methodology behind valuing is still similar and the necessity within insurance policies for re-build values to be correct is still the same.

When a policyholder is deemed to be a sophisticated customer an insurer has no obligation to question them about re-build value or make it clear to them what the policy values are meant to reflect. Given Mr S's recent response, it may be that it can't reasonably be said that he is a sophisticated consumer. But I still think he had relevant knowledge in respect of re-building costs and that he should reasonably have understood what was required of him.

NFU's assurance

I think NFU was a little pre-emptive when it gave this assurance to Mr S. It clearly still had enquiries to make. Looking at its file now, it seems it didn't have enough information at that point to be sure what the correct value was or whether or not Mr S was adequately insured. However, and while I don't know what was said at the house, I note that the assurance in the email sent to Mr S clearly came with caveats, such as (my emphasis):

*"which means that we would never reduce the value of your claim **in this scenario**"; and*

*"we would absolutely pay a claim in full in the event of a total loss **given the current sums insured**"; and*

*"our policy is to pay claims in full and **you would have to be severely underinsured for us not to do so**".*

I'm also mindful that, within fairly short order, a further email was sent to Mr S which asked him for cost details related to site-clearance work he'd undertaken. The same email explained that a proper assessment of the under-insurance was still outstanding and wouldn't complete until further cost details had been obtained.

So I don't think it would be fair to say that NFU mis-led Mr S in this respect. I can understand why he believes it did but I think what it said was clear. I think it was trying to deal with Mr S openly and honestly while also treating him fairly. And that is exactly what I'd expect a prudent and competent insurer to do.

did NFU make a fair assessment of the re-build value?

I'm aware of the industry calculator that Mr S has used to generate a value for the property that is in the region of what he was insured for. However, the calculator is just a guide and won't be accurate for all properties. And the NFU paperwork explains that its recommendation is that a professional valuation is obtained.

NFU's loss adjuster sought the professional opinion of the architect company that had designed the self-build property. Given the policy requires like-for-like replacement, I think that was a fair way of determining the most accurate re-build price. The price per square meter given is a little more than that used by the industry guide but I think that is understandable given the quality of materials used and the finish achieved.

NFU has shared the rebuild calculation with Mr S. This was set out in an email dated 12 May 2017. The *exact figure* NFU used was £1,345 per square meter and this was based on the building footing of 199 square meters. There are then demolition costs, professional fees and the value of the outbuildings to add on. I'm satisfied that all equates to £467,974.14, as stated by NFU. Whether or not NFU initially took some irrelevant costs into account (as Mr S has suggested), there is no sign that *this figure* is in any way made up of unfair or unnecessary values.

That being said, I'm not sure how NFU came to conclude that the outbuildings would cost £150,000 to rebuild. But nor am I persuaded, on the face of it, that this is an unlikely or unreasonable sum. There were three buildings – one of which had been the main house originally; it was a timber structure but fully boarded and plastered internally with a slab floor and mostly covered by a pitched concrete tile roof. This building and one other was all but completely destroyed by the fire. The other building was substantially damaged.

The reinstatement cost for all three (which really includes the re-build cost for two of them) was just over £136,000. So £150,000 to re-build all three seems like a fair sum.

I've taken into account the report Mr S has provided and the comments NFU have made in response to that. I can see that the surveyor has encountered some difficulty because Mr S no longer owns the property. That being said the surveyor doesn't seem to understand the way insurance policies work or what a "re-build" value means. So even if he had gained access or used the correct measurements it would seem his opinion would still be flawed because his methodology was wrong. And the report doesn't take into account the outbuildings. I'm not sure what he was told about these, whether they were reinstated before the property was sold or not. But they were valued by NFU at £150,000, so it isn't reasonable to not include a value for them into the re-build calculation.

Overall I don't find Mr S's recently obtained report shows that NFU's re-build value was incorrect. I note that NFU, while knowing the property has been sold, is still willing to re-consider the value it has set and, therefore, the offer it has made to settle this claim. I think NFU considering the claim in this way from the outset – even though it knew even then that the property was on the market, shows it was intent on treating Mr S fairly. I say this because I know Mr S had indicated that he'd rather NFU didn't settle based on diminution in value. NFU listened to Mr S in this respect and chose to make a settlement offer based on the reinstatement costs after the under insurance was taken into account.

Having considered everything, I'm satisfied that NFU assessed the re-build value of Mr S's property fairly. I don't intend to make it review its costings any further.

claim handling and delays

Mr S says the loss adjuster was set on delaying this claim. I haven't seen any evidence of that but I think it could have moved quicker at times. For example there was a period of a number of days where nothing happened because the loss adjuster was off sick and his emails weren't being picked up or dealt with. Being off sick can't be helped but procedures should be in place so work doesn't fall into abeyance.

But I'm not convinced that this claim was delayed drastically by NFU. It did take seven months for the first offer of settlement to be made but from what I have seen NFU wasn't dragging its heels during this time and there weren't any lengthy lapses where the claim stalled. That being said, and as noted above, there were some periods where NFU could have moved things on a little quicker.

For me though it seems that most of the upset Mr S has felt has stemmed from the under-insurance. And I note that it was only after NFU had issued its final view about how the policy was sold – that it hadn't been responsible for setting the re-build value – that a complaint about delays was made. NFU offered £250 in respect of delays. I'm not minded to make it pay anything more.

my final decision

I don't uphold this complaint. I don't make any award against The National Farmers' Union Mutual Insurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 March 2018.

Fiona Robinson
ombudsman