

## **The complaint**

Miss G complains that The National Farmers' Union Mutual Insurance Society Limited ("NFU") declined a claim she made on her pet insurance policy.

## **What happened**

Miss G had a Horse and Rider policy with NFU. The policy started on 11 July 2022 and provides cover for, amongst other things, theft of horse or death due to accident, illness, disease or straying, veterinary costs for the horse following an accident, illness or disease, loss, or damage to tack and equipment, and legal costs to recover uninsured losses following an accident.

In early July 2022, before her policy with NFU began, her horse had a vet call for potential colic. Miss G says she removed the horse's fly rug the night before the appointment with the vet due to it having diarrhoea. When she went to see how the horse was doing the next day he had been bitten by flies overnight.

When the vet arrived for the scheduled appointment the vet gave her some shampoo and a cream to apply to the bites to calm the reaction.

On 26 July 2022 her horse had a bald patch where he had rubbed due to itching. From that date the vet was involved to try and discover what was causing the itching, including full allergy testing.

Miss G says she put a claim into NFU and from July 2022 to October 2022 NFU were trying to decide whether it would pay the claim as it believed it to be a pre-existing condition. Miss G says the horse had never suffered from a skin condition previously; and if there was a pre-existing condition she would have declared it.

Miss G says NFU spoke to a vet at her practice who had not seen the horse on 6 July 2022 and the vet presumed the shampoo was given due to the itchy problem currently being investigated. And so NFU took that to mean the horse had a pre-existing condition and voided the policy. Miss G says this unfairly left her uninsured with outstanding vet bills of over £700.

Miss G wasn't happy and so she complained to NFU. She says she wants NFU to pay the claim and remove the void policy from her name. NFU said it asks customers a set of questions when they take out or renew a policy. NFU said if it had known on 11 July 2022, when the policy was inceptioned, that the horse had been treated for a skin condition it would not have offered her cover. It said it listened to the calls and checked emails and there was no mention of the skin condition.

Miss G wasn't happy with the response from NFU so she referred her complaint to this service. One of our investigators looked into things for her but having reviewed all of the information felt that NFU had declined the claim fairly and in line with its policy terms.

Miss G didn't agree. She said she didn't think fly bites were a skin condition and the claim had been dealt with by her previous insurer. So the complaint came to me to decide.

### **My provisional decision**

I recently issued a provisional decision setting out my thoughts on the key complaint points and how I thought matters might best be resolved. I said;

*"Before I explain why I've reached my intended decision I think it would be useful for me to explain how I've considered the complaint. It's not my role to re-underwrite the claim as that's not the role of this service. Instead, it's my role to consider the actions NFU have taken, in this case declining the claim, and consider whether I think NFU have acted fairly in doing so. And as part of this, I've thought about whether NFU acted in line with the terms and conditions of the policy Miss G held.*

### **Pre-existing condition**

*In order to consider this complaint I've taken into account what the clinical notes show and the opinion of the experts. I can see there's a dispute between the parties about whether there were any clinical signs of the condition prior to inception of the policy. I should stress that I'm not a vet and nor do I have specialist veterinary knowledge, so when considering such complaints I take into account what the clinical notes show and the opinion of the experts. And that's what I've done here.*

*The vet made representations on behalf of Miss G and says the appointment on 6 July 2022 was for abdominal discomfort. And while she was there she noted the fly bites so prescribed some treatment. This is in line with Miss G's testimony about why the horse was seen by the vet and what happened at that appointment.*

*Miss G's policy, like many other pet policies, doesn't cover pre-existing conditions. It says:*

*"We will not pay any claim for a horse which directly or indirectly arises from, or is connected with any accident, illness, disease or condition that happened, manifested, was present or had been diagnosed in the horse before the start of cover."*

*The term "Condition" is defined as "any change in behaviour, internal or external symptoms appearing or recurring in any area of the horse's body, whether or not a specific illness or disease is diagnosed."*

*So it is not necessary for any condition to have been diagnosed for it to fall within this definition. But the symptoms which appear before the start of the policy or within the waiting period must be a clinical sign or symptom of the condition claimed for. That means NFU should establish that Miss G's horse had clinical signs or symptoms of a skin condition he was suffering from in order to rely on this exclusion. With this in mind I've looked at the history of the horse's previous visits to the vet.*

*The notes from the vet visit on 6 July 2022 confirm, "he is, however, covered in multiple pea size fly bites that are crusting and appear very painful.... advised treatment of skin lesions with malaseb and isaderm and to reassess."*

*The claim form submitted by the vet describes the horse's history as, "large patches dermatitis around anus/gluteals".*

*I can see from the notes from 11 August 2022 it says, "large areas excoriation surrounding tail head and plantar gluteals. Many small nodular insect bites across rest of body. Test*

*taken by owner for pinworm but repeated as lesions classic pinworm in appearance...discussed skin testing as next diagnostic step."*

*The vet's notes from prior to inception of the policy and afterwards appear to be describing fairly similar symptoms. The onus is on an insurer to provide that an exclusion applies. I haven't seen any mention by a treating vet that the fly bites are linked to the skin condition the horse suffered once the policy had started. The notes say the skin issues could be related to pinworm, grass warts, or a skin allergy. Given this I think NFU acted unfairly in refusing the claim on the basis the horse had a pre-existing condition.*

*Miss G's testimony was that the fly bites occurred when her horse's fly rug was taken off due to the horse suffering diarrhoea and it affecting the rug. Overnight the horse suffered a lot of fly bites, and this seems plausible. Miss G says she didn't think 'a few' fly bites counted as a skin condition.*

*The claim made on the policy in August 2022 was for treatment for large patches of dermatitis around the gluteal. The vet history referred to there being 'many small nodular insect bite lesions across the rest of the body.' I'm satisfied this distinguishes the fly bites from the 'large areas excoriation surrounding tail head and plantar gluteals.' The underwriting evidence provided to me refers to 'skin nodules' which appear to be something else and not fly bites.*

*I don't think NFU has shown the bites were related to the skin conditions the horse suffered thereafter. As such NFU has not shown that it can fairly apply the exclusion. I think the fair outcome is for NFU to pay the claim, together with interest as set out below.*

*In the absence of persuasive evidence of such a connection I don't think NFU treated Miss G fairly in declining the claim on the basis of a pre-existing condition. By issuing this provisional decision I'm giving both parties the opportunity to provide whatever further evidence they have in this regard.*

### **Misrepresentation**

*The relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). In line with CIDRA, I would usually consider it fair for an insurer to apply a retrospective exclusion if its policyholder didn't take reasonable care in answering its clear questions when they bought the policy. And the insurer can show it would have added an exclusion had it been given the information.*

*CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. And if a consumer fails to do this the insurer has certain remedies provided the misrepresentation is a qualifying one. For it to be qualifying the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.*

*CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*NFU thinks Miss G failed to take reasonable care not to make a misrepresentation when she took out the policy and didn't disclose her horse had shown signs of illness, injury or being unwell. NFU say this prevented it from applying an exclusion or declining the policy.*

*The first point I've considered is whether Miss G took reasonable care not to make a misrepresentation. I've looked at the information she was presented with when she took out*

*the policy. Miss G was asked whether, in the last three years, she had made any claims regarding vet fees or lost horses. She answered she “had vet fees last year, field accident. And uveitis”. At this point the horse hadn’t suffered with any skin problems so I’m satisfied Miss G took reasonable care to answer the questions.*

*NFU said it would have continued with cover if Miss G had contacted it during the period in between the sale and the inception and told it her horse had been bitten by some flies and been prescribed some topical medication. Miss G didn’t call to make NFU aware of the fly bites because she didn’t think it was a condition that needed to be reported. But even if she had, NFU said it would have continued with the cover. So I don’t think it’s shown that it would have done something differently.*

*I don’t think Miss G failed to take reasonable care when answering the questions she was asked about her horse’s condition, so I don’t think NFU can alter the contract it entered into on the basis the horse then suffered with skin conditions.*

*CIDRA only allows NFU to alter the terms of the policy if a qualifying misrepresentation has been made. And as explained Miss G didn’t fail to take reasonable care, so, there is no qualifying misrepresentation.*

*It follows that I don’t consider NFU was entitled to backdate the policy exclusion for claims with respect to the horse’s skin condition and cancel the policy due to misrepresentation. And to put things right I think NFU should continue to offer cover on the terms of the contract as it was entered into. For clarity that means including cover for skin conditions on an ongoing basis until the policy limits are reached.*

*I think NFU’s decision not to pay the claim has caused Miss G some distress and inconvenience. I think it should fairly pay her some compensation for that and I assess £100 to be a reasonable amount.”*

## **Response to my provisional decision**

I asked both parties to send me any further evidence or arguments they want me to consider.

Miss G agreed with the outcome in the provisional decision.

NFU didn’t agree with the outcome. It said it wouldn’t have accepted cover if the bites were being treated as was the case here. If it had been a couple of fly bites on their own cover would have been allowed. NFU said five days before policy inception the horse was prescribed treatment for the bites and had it been aware cover wouldn’t have been accepted.

NFU also said their own vet advised the skin issues over the body was dermatitis – there were no results from allergy testing but the flea bite treatment appeared to resolve the skin issues. And so this falls outside of cover. NFU said the horse’s tail could have been linked to pinworm and so it was agreed this part of the claim would have been met, had the policy not been voided.

So I have considered both parties positions and reviewed the evidence provided.

## **What I’ve decided – and why**

I’ve considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint.

I think it would be useful to reiterate it's not my role to re-underwrite the claim as that's not the role of this service. My role is to consider the actions NFU have taken, in this case voiding the policy and declining the claim and consider whether I think NFU has acted fairly in doing so.

And having considered everything again my position has not altered.

### **Misrepresentation and policy avoidance**

If a consumer has provided information that is incorrect or incomplete then in order for the misrepresentation to be a qualifying one NFU need to show Miss G didn't take reasonable care not to make a misrepresentation; and based on what I've seen I'm not persuaded Miss G didn't take reasonable care.

NFU say medical assistance was sought in advance of the policy commencement date. Miss G has explained she wasn't aware that fly bites were considered a 'condition'. The insurer has applied a strict interpretation of the pre-existing condition exclusion but I think this is unfair when there was no way the consumer could have known about it before the policy started. Her testimony regarding the bites and the visit from the vet has remained consistent, is compelling, and is corroborated by the vet. So I'm persuaded by what she's said.

CIDRA only allows NFU to alter the terms of the policy, or void it completely, if there has been a misrepresentation. As there was no qualifying misrepresentation the insurer can't take any action. As previously explained, on balance, it appears Miss G took reasonable care when answering NFU's questions.

But even if Miss G hadn't taken reasonable care not to make a misrepresentation NFU has to show it would have done something differently. And based on the evidence its provided to me I can't see NFU has done this. It says it wouldn't have provided cover if there were skin nodules that were undergoing treatment but I don't think that's what has happened here. The horse had some fly bites the symptoms of which were treated with a topical solution to prevent them becoming infected. I'm not persuaded fly bites could be seen as dermatitis or any other skin condition.

And so because I don't think NFU has demonstrated it would have acted differently had it been aware of the fly bites, and I think Miss G took reasonable care not to make a misrepresentation then it follows there is no qualifying misrepresentation here. And so NFU aren't able to take any action in respect of the policy, including to void it.

### ***Pre-existing condition***

NFU's vet noted, *"the animal had crusting (exudative) pruritic/painful popular skin nodules that were widely dispersed over its body prior to inception of insurance These popular skin lesions persisted for several months after the inception of the insurance."* I've checked the notes from the vet's visit at the time. And she refers to fly bites that appeared overnight when the fly rug was removed (for good reason) – and recommended treatment to stop the bites becoming infected. She doesn't confirm the presence of nodules, skin lesions, or dermatitis at this stage. And there is no suggestion the horse suffered any skin issues prior to the bites within the notes. I think the attending vet's notes are persuasive given they're contemporaneous and written by someone who physically saw the horse at the relevant time.

The claim made on the policy in August 2022 was for dermatitis and its noted within the records that the horse has 'small nodular insect bites' which I think distinguish the bites from the dermatitis.

As previously explained I don't think NFU has shown the bites were related to the skin conditions the horse suffered thereafter. As such NFU has not shown that it can fairly apply the exclusion. I think the fair outcome is for NFU to pay the claim, together with interest as set out below.

Taking a pragmatic view of the complaint and based on the evidence that's been presented its clear the horse suffered from different conditions that happened to have similar symptoms.

So for the reasons explained above I'm upholding Miss G's complaint and have set out below what NFU need to do to put things right.

### **Putting things right**

Given the conclusions I've reached, as set out above, I think NFU should;

- Treat Miss G's policy as though it hadn't been avoided
- Ensure any record of, or relating to, the cancellation of Miss G's policy and/or the alleged misrepresentation is removed from their own and any other database records.
- Pay the claim in line with the terms of the policy; and add 8% yearly simple interest from the date the claim was declined to the date NFU settle this complaint
- Pay Miss G £100 compensation for distress and inconvenience

### **My final decision**

For the reasons explained above, I uphold Miss G's complaint and intend to direct The National Farmers' Union Mutual Society Limited to do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 15 December 2023.

Kiran Clair  
**Ombudsman**