

The complaint

Mr M complains that The National Farmers' Union Mutual Insurance Society Limited (NFU) mis-sold him a 'Tradesman' insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In 2013, Mr M was visited by an appointed representative (AR) of NFU to discuss his insurance needs. The AR advised Mr M to take out a 'Tradesman' insurance policy, which provided a range of benefits, including group personal accident insurance. This policy was underwritten by NFU in its capacity as an insurer. Mr M accepted the AR's recommendations and a policy was set-up. The policy renewed each year.

Unfortunately, in 2022, Mr M had a motorcycle accident whilst riding on the road. And so he made a claim on the personal accident cover for his lost income. But NFU, in its capacity as the insurer, turned down Mr M's claim because the policy specifically excluded claims for motorcycling unless it was for agricultural purposes on a policyholder's own land.

Mr M was unhappy with NFU's decision to turn down his claim. And he felt the policy had been mis-sold to him by NFU's AR. That's because he said the AR had told him he'd be covered for riding his motorcycle on the road – but he wouldn't be covered if he rode his motorbike for professional sport. He asked us to look into his complaints.

Our service considered a complaint about the NFU's decision to decline the claim separately.

Our investigator thought Mr M's complaint about the sale of the policy should be upheld. She felt that as NFU's AR had advised Mr M to take out the policy, it needed to check it met his needs. She thought Mr M's recollections about the sale were plausible and persuasive. So she considered Mr M likely had been told he'd be covered for riding on the road.

She noted that once Mr M learned he wasn't covered for motorcycling, he'd paid NFU an additional premium for motorcycling cover to be added. The option to add-on this cover had been available to Mr M at the time he'd taken out the policy.

The investigator concluded that much of the policy appeared suitable for Mr M's needs. But given his need for motorcycle cover, she thought the overall recommendation hadn't been suitable. Instead, she thought if Mr M had known he'd need to pay extra for motorcycling cover, he'd have paid the additional premium since 2013. And if he'd done so, his claim for lost income would have been paid.

Therefore, she felt the fair outcome to Mr M's complaint would be for NFU to assess Mr M's claim as if the additional cover had been in place since inception. If the claim was otherwise payable, the investigator thought NFU would be entitled to deduct the additional premiums it would have charged Mr M for the motorcycle cover. She also felt NFU should pay Mr M £200

compensation to reflect the distress and inconvenience its AR's actions had caused him.

NFU disagreed. It said there was no evidence on file that its AR had known Mr M had a motorbike or that any guidance was given about the personal accident cover. So it follows that the AR wouldn't have known to specifically highlight the motorcycling exclusion. It said there were a number of exclusions under the personal accident cover and it wouldn't expect an adviser to highlight each one. It stated it understood that when there was a discrepancy about what had happened, it should rely on the available documentation. It considered that in this case, the documentation made it very clear that motorcycle accidents aren't covered. It said Mr M took out the policy to protect his business needs, not his mobility.

The complaint's been passed to me to decide.

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.

Having done so, I agree with the conclusions reached by our investigator and I'll explain why.

It appears that NFU now accepts that its AR advised Mr M to take out the Tradesman policy. The post-sale documentation makes it clear that the AR carried out an assessment of Mr M's demands and needs and made a recommendation based on that assessment. That means that NFU's AR needed to ensure that the policy was suitable for Mr M. And NFU also needed to provide Mr M with enough clear, fair and not misleading information about the policy so that he could decide if it was right for him.

Unfortunately, there is very little documentary evidence of what took place during the meeting between Mr M and the AR. There's no fact-find which recorded what was discussed, nor a detailed 'reasons-why' letter, setting out the AR's rationale for recommending the policy. The documentary evidence is broadly limited to the post-sale policy documentation NFU sent to Mr M – which included a 92-page policy document. The relevant motorcycling exclusion is set out on page 87 of the contract terms. It isn't included on the schedule itself.

Mr M has provided clear and consistent testimony about what happened during the meeting with NFU's AR. He says that he told the AR that he motorcycled on the road and that the AR told him this would be covered by the personal accident policy. He's told us that the AR simply told him that professional motorcycling was excluded by the contract terms. However, it's clear that the policy broadly excluded claims due to motorcycling accidents, except in very specific circumstances.

Where there's a dispute about what's happened, I need to make my decision on the balance of probabilities – what I think is most likely to have happened, given the available evidence and the wider circumstances. In this case, it seems clear to me that Mr M did want personal accident cover. I say that because the post-meeting 'statement of insurance' shows that Mr M selected personal accident cover. And given Mr M appears to have used his motorbike for transport purposes, I find it most likely that he'd have wanted to be insured for motorcycle accidents too.

Having considered the available evidence, I find Mr M's testimony plausible and persuasive. In the absence of any fact-find or reasons-why letter, on balance, I think the AR most likely *did* tell Mr M that motorcycling would be covered by the policy. I note the policy excludes cover for professional sports. While I appreciate this is often a standard exclusion in

personal accident policies; it tallies-up with Mr M's recollections that the AR informed him he wouldn't be covered for professional motorbiking. And at the point Mr M learned he *didn't* have motorcycle cover; he added the cover to his policy and agreed to pay a significantly higher premium for that protection. So it seems to me that if Mr M had been told, at the point of sale, that he wasn't covered as standard and that he needed to pay more for motorcycle cover, he'd have taken it out.

Like the investigator, I think it seems that much of the policy the AR recommended was broadly suitable for Mr M's needs. But I think there was a clear gap between what I think the AR likely told Mr M about personal accident cover for motorbikes and the exclusion which actually applied. In my view, this was a clear failing on the AR's part. As I've explained above, I think if the AR had made the exclusion clear, Mr M would have chosen to add motorcycle cover and pay more for the policy. If he'd done so, it seems likely he'd have been in a position to make a claim for lost income following his accident.

NFU says that Mr M was sent documentation post-sale and at each renewal which set out the exclusion. It's also referred to post-sale reviews with the AR in 2015 and 2021. As I've set out above, the exclusion is detailed on page 87 of a 92 page policy booklet. Given the importance of cover to Mr M, I'm not persuaded that this term was clearly drawn to his attention. And in my view, given Mr M seems to have believed he was covered for non-professional use of his motorbike following the original sale in 2013, there would have been little reason for him to refer to this in later policy reviews.

Overall then, I think Mr M has lost out as a result of NFU's AR's error. I think the AR's failing to ensure the personal accident cover met Mr M's needs and their failure to highlight the breadth of the exclusion caused Mr M to potentially suffer a financial loss he wouldn't otherwise have done. Therefore, I think NFU needs to take steps to put things right. In this case, as NFU underwrote Mr M's policy, as well as being the AR's principal, I think the fair outcome to this complaint is for NFU to assess Mr M's claim as if he'd taken out the motorcycle cover at inception.

Putting things right

So I direct NFU to consider Mr M's claim as if he'd taken out the motorcycle endorsement in 2013, in line with the remaining terms and conditions of the policy. If the claim is otherwise payable, then NFU must pay monthly lost income benefit to Mr M for the period he was unable to work. NFU should calculate the additional premium Mr M would have paid for the motorcycle cover for 2013 onwards (including any premium discounts he'd have benefited from) until the date of the accident. It may then deduct this amount from any benefit settlement due. If any settlement is due after such a deduction, NFU must add interest at an annual rate of 8% simple to each benefit payment, from the date benefit was due until the date of settlement.

I agree with our investigator that NFU's AR's actions have caused Mr M material, unnecessary distress and inconvenience at a time when he was already injured and unable to work. So I'm also directing NFU to pay Mr M £200 compensation.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct The National Farmers' Union Mutual Insurance Society Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 12 January 2024.

Lisa Barham
Ombudsman