

The complaint

Mr C is unhappy with what The National Farmers' Union Mutual Insurance Society Limited (NFU) did after he made claims on his 'Bespoke Insurance' policy.

What happened

In 2020 Mr C contracted with a builder to carry out work at his property (including the construction of a riding arena). Some of the work was completed later than specified in the contract and other work wasn't done. In January 2021 the builder abandoned the site. Mr C made a claim on his legal expenses insurance for assistance in pursuing a claim against the builder. He also made a claim on the policy for damage caused by the builder to the arena floor.

NFU referred the matter to panel solicitors whose initial assessment was that it enjoyed reasonable prospects of success (a requirement of the policy). Matters progressed and counsel was instructed to prepare court proceedings. However, in July 2022 the panel firm said an updated financial check found there were no longer reasonable prospects of recovery. As a result cover for the claim was withdrawn.

In relation to the separate claim for damage under the buildings section of the policy NFU said this wasn't covered. That was because the policy excluded "*damage caused by faulty design, material or workmanship*". It thought that applied to this claim.

Our investigator agreed that the claim for damage had been turned down in line with the policy terms. And it was reasonable of NFU to rely on the advice of the panel solicitors when withdrawing cover for the legal expenses claim. He thought an offer NFU subsequently made to cover the costs of Mr C obtaining his own prospects of recovery assessment (up to a value of £735 plus VAT) was fair. He also thought NFU had provided Mr C with some inaccurate information after his legal expenses claim had been declined and said it should pay £300 in recognition of the distress and inconvenience that caused.

In response to the view on the legal expenses insurance claim Mr C didn't agree the compensation was enough. And he subsequently issued court proceedings in relation to this. Our investigator explained we wouldn't be giving further consideration to matters that were the subject of ongoing court proceedings. In relation to the damage claim as it related to the riding arena Mr C didn't agree this wasn't covered. He said the builder wasn't carrying out work when the damage was caused but was inspecting in order to provide a quote for drainage. So I need to reach a final decision on this issue.

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 know this matter has caused Mr C a great deal of distress and he's also incurred a significant financial loss as a result of the failure of the builder to complete the contracted works. I was very sorry to learn of these issues. And I appreciate he's unhappy with what NFU did in relation to the claim he made on his legal expenses insurance.

But Mr C has issued court proceedings in relation to those matters. And it wouldn't be appropriate for us to consider matters that are also being considered by the courts. We previously asked him for copies of the court papers to understand exactly what the issues in dispute were here but these haven't been provided.

However, in his most recent view to Mr C our investigator acknowledged that he'd initiated legal proceedings for matters relating to the legal expenses insurance complaint (including the issue of compensation). And he made clear those weren't issues we'd be considering if the matter progressed to a final decision. Mr C didn't provide any comments on that point in response or suggest there were issues in relation to this claim that he wanted to pursue (and which weren't subject to the ongoing court proceedings).

As a result I haven't considered matters relating to the legal expenses complaint in this decision. I've focussed on the damage claim as it relates to the riding arena which is what Mr C did challenge in response to the investigator's view (I haven't seen any evidence to show he's taken legal action against NFU in relation to this matter).

In considering this I've taken into account that the relevant rules and industry guidelines say NFU has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr C's policy. This does cover damage to buildings and it defines damage as "*unexpected and unintended physical loss or damage*". But it excludes damage caused by "*faulty design, material or workmanship*".

In this case the specific issue Mr C is concerned about (and on which he's asked for a decision) relates to the floor surface of the riding arena. He says damage to this was caused by the builder in May / June 2021 (after he'd left site in relation to the other works) and when he was carrying out an inspection to provide a quote for drainage. While carrying out that inspection Mr C says the builder dug a hole which damaged an existing membrane and pulled up stones making the surface unsafe and meaning it needed to be replaced.

I appreciate this issue appears to have arisen after the builder had walked off site in relation to the work he'd previously been contracted to carry out. Mr C may be right to say the damage didn't form part of the contractual work. But I don't think that makes a difference as there's nothing in the policy that restricts the exclusion to work carried out under a contract.

And I do think it's reasonable of NFU to conclude the damage in this case results from faulty workmanship. That term isn't defined in the policy but I think a reasonable interpretation of it would be work that has been carried out poorly. In this case I appreciate the purpose of the builder's visit was to provide a quote but he clearly decided to carry out work as part of that process (presumably to establish, in his view, what further work was required which he would then quote for).

Mr C's view is that the work was unnecessary and caused damage. And I understand he subsequently asked another builder to look at what happened who told them the surface had been "*ruined*" by what the previous builder had done. All of that suggests to me that this relates to work that had been carried out poorly and would therefore be caught by the exclusion in the policy as it relates to this. So I don't think NFU acted unfairly in declining the claim on that basis.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 31 August 2023.

James Park
Ombudsman