

The complaint

F is unhappy that The National Farmers' Union Mutual Insurance Society Limited (NFU) has turned down its claim under its Agricultural Vehicle Insurance Policy for its Telehandler after it suffered damage whilst in use.

F is represented by Mr H, Mr H and Mrs H.

What happened

I issued a provisional decision on this complaint on 27 November 2023 and set out what I'd provisionally decided and why as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of F's complaint.

Having done so, I've provisionally decided it should be upheld for the following reasons:

- F's policy covers damage to their Telehandler and it is damaged. This means it is for NFU to show that an exclusion applies which defeats F's claim. And I don't consider NFU has done that.*
- Its engineer said the damage was due to wear and tear. And a Consultant Forensic Engineering Metallurgist, who I'll refer to as Mr G, said it was due to what he describes as mechanical failure. By this he means it failed as a result of fatigue fractures which eventually led to it breaking under what would be considered normal loading.*
- However, he mentioned in his report that he'd have expected fatigue cracks to be picked up in a properly carried out LOLER examination. One of these took place 9 to 10 months before the Telehandler failed and didn't identify any cracking. In fact, it was given what might be best described as a clean bill of health. At the time he did his report Mr G was not aware this examination had taken place.*
- When our investigator asked NFU to obtain Mr G's specific comments on this he suggested that the examination did not detect potentially disastrous structural defects. From what he's said it seems he is suggesting that the examiner missed the fatigue cracking that would have been present. However, bearing in mind the LOLER examination was a legal requirement and the examiner was suitably qualified to carry it out, I think this is highly unlikely. I think the report shows it is more likely that there were no fatigue cracks at this time.*
- This view is supported by the comments of the examiner, who said he'd have taken photographs if there was any cause for concern.*
- This suggests to me that the most likely cause of the damage to the Telehandler was the fact it was overloaded by accident at the point it broke and it was this unusual*

- overload that caused the boom arm headstock to crack and break off.*
- Of course, I can see from the photographs provided that there was some wear and rust to the Telehandler. But I do not consider – in light of the evidence – NFU has shown this was the dominant and effective cause of the damage. This means I agree with our investigator that the damage to F's Telehandler is covered by their policy and that NFU should settle their claim under it in accordance with the settlement terms in the policy.*
- I also consider NFU should pay interest on the amount due to F at 8% per annum simple from the date it paid the repair invoice to the date of actual payment. This is to compensate F for being without funds it should have had.*

F has also mentioned it had to hire a Telehandler up to the point it finally had its own one repaired. I've considered whether I should make NFU pay something for hire costs, as F raised this as part of its complaint.

I think NFU's engineer should have realised it needed to check whether F's Telehandler had had a safety inspection at the outset. This is a standard requirement for this sort of machinery and NFU's engineer should have known that and checked when the last inspection had taken place. And I think if he had done this and obtained a copy of the LOLER report from F, NFU should then have accepted the claim as opposed to rejecting it. Instead, it rejected the claim on 19 December 2022 and this led to F challenging the decision, providing its own reports and Mr G being commissioned to provide a report. This meant F didn't know the final outcome on its claim and complaint until 2 May 2023, when NFU issued its final response. And it was really only at this point I would have expected F to mitigate and pay for its Telehandler to be repaired. I say this because up to this point it would have been hoping NFU would change its mind and it would not have to pay out such a large amount in one go to have its Telehandler repaired.

As I see it, NFU should have got the LOLER report and accepted the claim by the beginning of January 2023. This means F ended up hiring a replacement Telehandler from early January 2023 until 2 May 2023, i.e. 17 full weeks, purely as a result of NFU's error in not obtaining the LOLER report and accepting the claim once it had reviewed it. So, I think NFU should also cover the cost to F of hiring a replacement Telehandler for this period.

I've seen an invoice for hire at £450 per week, which I have no reason to consider unreasonable as a cost for hiring a Telehandler. This means I think NFU should pay F £7,650 to cover hire costs. It should also pay interest on this amount at 8% per annum simple from the date F paid the hire invoice to the date of actual payment. This is to compensate F for being without funds it should have had.

I gave both parties until 11 December 2023 to provide further comments and evidence.

F responded to say that it thinks if NFU had dealt with the claim as it should have done, it would have been settled before Christmas. So, it thinks it should get more towards hiring a replacement Telehandler.

NFU has responded. It has reiterated the comments of Mr G, which it believes shows that the hairline cracks that were present in F's Telehandler were present when the LOLER inspection took place and weren't picked up. It remains of the view that the evidence from Mr G shows that the Telehandler failed due to wear and tear.

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, it remains my view that it should be upheld for the reasons set out in my provisional decision.

I have noted what NFU has said. But, despite what Mr G said, I do not consider it likely that the LOLER examiner missed something as fundamental as fatigue cracks when he carried out his inspection. As I mentioned in my provisional decision, the inspection was a legal requirement and it would have been a very serious oversight if he had missed something as significant as fatigue cracks. Therefore, I think it is more likely than not that they were not present when he carried out his inspection. And this means I do not think that NFU has shown that it was wear and tear that was the dominant and effective cause of the damage to F's Telehandler.

I've also noted what F has said about hire charges. But, as I explained in my provisional decision, even allowing for delays due to the absence of its engineer due to illness for a short period, NFU needed sometime to investigate the claim. And it remains my view that it should have investigated it and agreed to settle it by the beginning of January 2023; but no earlier than this.

Putting things right

For the reasons set out above and in my provisional decision, I've decided to make The National Farmers' Union Mutual Insurance Society Limited settle F's claim for the damage to its Telehandler in accordance with the claim settlement terms in F's policy. I've also decided to make NFU pay interest on the amount due to F at 8% per annum simple from the date it paid the repair invoice to the date of payment.

I have also decided to make NFU pay F £7,650 to cover the cost of it hiring a Telehandler for a period of 17 weeks, plus interest on this amount at 8% per annum simple from the date F paid the hire invoice to the date of actual payment¹.

My final decision

I uphold F's complaint and order The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 12 January 2024.

Robert Short
Ombudsman

¹ NFU must tell F if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate F if asked to do so. This will allow F to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.