

The complaint

A business I'll refer to as "A1" complains The National Farmers' Union Mutual Insurance Society Limited (NFU) unfairly declined a claim against its Farm Select insurance policy.

What happened

The background to the complaint is known to all parties so I won't repeat it here in detail. In this decision, I'll mainly focus on giving the reasons for reaching the outcome I have.

A1 is a business that grows and sells trees, amongst other things. It had a large order for Oak trees in 2022 but was prevented from fulfilling this order because of the discovery of Oak Processionary Moth (OPM) within a two-kilometre range of its premises. A government authority wrote to A1 to stop its sale of Oak trees. A1 had business interruption insurance, so it raised a claim with NFU.

NFU considered the claim but declined it. They say for a business interruption claim to be met under the '*Action of Competent Authority*' cover extension, vermin or pests must be discovered on the business' premises. And that wasn't the case here. A1 didn't think this was fair given OPM was discovered within very close proximity of its premises and prevented it fulfilling a large sale order for Oak trees. So, it asked our Service for an impartial review.

The investigator didn't recommend the complaint be upheld as he thought NFU considered and declined the claim fairly under the policy. A1 asked for an ombudsman to decide, so the case was passed to me for a decision.

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.

My starting point is the policy which, under the business interruption section, says:

'Cover extensions

Action of Competent Authority

WE will pay for loss of GROSS PROFIT arising from the closure or restriction in use of the PREMISES by a competent local authority due to the defects in the drains or other sanitary arrangements or discovery of vermin or pests at the PREMISES.'

Under the general definitions, the buildings is referred to as the premises in which the policyholder owns or for which they are responsible for. The policy also defines the premises as:

'The premises shown on YOUR schedule comprising the BUILDINGS or BUILDINGS of which YOU are the sole occupier (unless otherwise shown on YOUR schedule) in

connection with YOUR BUSINESS and the land within the boundaries belonging to them'.

It's my view the policy makes clear for the cover extension to respond, vermin or pests must be discovered on the premises. So, while I acknowledge the close proximity where OPM was discovered, I'm not satisfied it was unfair or unreasonable for NFU not to accept responsibility for the losses A1 suffered as the result of a government authority restricting its premises use.

I acknowledge the government authority wrote to A1 to set out it had reasonable grounds to suspect A1's premises was infected by OPM. However, its letter also stated OPM was discovered within a two-kilometre range of its premises on an established Oak tree. A1 say OPM was discovered approximately ten feet from its premises. And NFU stated that if OPM is later discovered at A1's premises, a claim would be considered. I think that's reasonable, and I say this because I've not seen evidence to support OPM was discovered at A1's premises – which the policy says is required for a claim to be met.

It's my view the government authority put in place preventative measures to mitigate the risk of OPM spreading. And A1 were more likely than not included in this exclusion zone given the greater risk its premises posed due to the discovery of OPM within close proximity of its premises. But, as mentioned above, I find the policy terms are clear in what's required for it to respond to a claim. Therefore, I'm not persuaded NFU considered or declined the claim unfairly or unreasonably here. And so, I don't require them to take any action.

I accept my decision will come as a disappointment to A1. But it ends what we – in attempting to informally resolve its dispute with NFU – can do for it.

My final decision

For the reasons given above, my final decision is I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A1 to accept or reject my decision before 6 November 2023.

Liam Hickey
Ombudsman