

The complaint

Mr W's complaint is about a claim he made on his The National Farmers' Union Mutual Insurance Society Limited ('NFU') legal expenses insurance policy.

Mr W says NFU treated him unfairly.

All references to NFU include their claims handlers.

What happened

In 2022, Mr W made a claim on his NFU legal expenses insurance policy for cover to deal with a dispute with his neighbour regarding the removal of fencing between their properties.

In his claim, Mr W said the dispute started in 2011. NFU accepted the claim and agreed to fund Mr W's own choice of Solicitors on his request to consider the merits of the claim. The Solicitors he eventually instructed completed a claims management report and returned that to NFU.

On review of the report, NFU noted that the dispute Mr W had with his neighbour appeared to have started in 2011- several years before the policy was in place. As such they eventually determined the claim wasn't one that was capable of being covered.

In communicating this to Mr W, NFU accepted they'd failed to communicate this properly to him and his Solicitors. As such they offered Mr W £250 for this.

Unhappy with the position Mr W complained to the Financial Ombudsman Service. Our investigator considered his complaint and concluded it should be upheld. She said whilst the policy term NFU were relying on did apply, it wasn't fair to apply it in the specific circumstances of Mr W's complaint. She cited several reasons for this. NFU didn't agree so the matter was passed to me to determine.

I issued a provisional decision earlier this month in which I said:

"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 intend to depart from the investigator's findings and not uphold Mr W's complaint.

The starting point is the policy terms. They only offer cover where the "date of occurrence" of the insured incident is during the period of policy cover. "Date of occurrence" is defined as follows:

"DATE OF OCCURRENCE

For civil cases (except under Contract Disputes and Tax Protection), the date of occurrence is the date of the event which leads to a claim. If there is more than one event arising at different times from the same originating cause, the date of occurrence is the date of the first

of these events. (This is the date the event happened, which maybe before the date YOU or an INSURED PERSON first became aware of it)."

Mr W took out and annually renewed his policies with NFU in 2018. He disputes the date of occurrence happened before this date. Rather he says the dispute with his neighbour started in 2021. On the other hand, NFU say that it's clear from the pleadings in this case that Mr W and his neighbour were engaged in a dispute about the same problems in 2011. NFU also put the matter to their panel firm for advice. The panel firm advised them the claim was a continuation of the events that took place in 2011.

I've considered what the parties have said- and in particular Mr W's assertion that the matters in 2011 came to an end at that point and nothing at all happened between the parties until a decade later. He said he had no reason to believe that the dispute would be reignited and has made the point that in 2011, he was a tenant of the property he now owns, so had no legal right to bring a claim at that time anyway. As I understand it, Mr M bought his property in 2013. He's also made the point that any claim in relation to the matters complained of in 2011 would have been time barred because civil claims have a limitation of six years.

Like the investigator, I agree with NFU's assertion that the date of occurrence in this case did predate the policy. It's clear from the pleadings that the dispute that's being litigated now is the same dispute that was in occurrence in 2011 because it concerns the same parties and the same boundary as well as the same contentions over where the parties think their land starts and ends. It makes no difference whether Mr W owned his land in 2011 because the terms require the date of occurrence to be the date of the event which leads to a claim. The claim itself could be made in trespass against him- he didn't need to own his property for that. And in this case the earliest date is when Mr W removed the fence between the properties.

I've gone on to consider whether it was fair for NFU to rely on the term in issue here. The purpose of insurance is to cover events that might or might not happen. So, we wouldn't expect an insurer of a before the event insurance policy like this to cover something the policyholder might have known could give rise to a claim later on.

At the time Mr W was in dispute with his neighbour about the fence, I agree that he wouldn't have been in a position to bring a claim against them because he wasn't the owner of that land, but as I've said above, he could well have been a Defendant in that claim if the neighbours had litigated against him for trespass at the time. They didn't so I've thought about whether Mr W might reasonably have considered the matter would continue to cause problems later on down the line when he purchased the property in 2013. This was 2 years after the matter went quiet so, it's quite possible he might have anticipated a resurgence. But by 2020, I think it would have been reasonable for him to conclude 9 years on that there was very little likelihood the dispute would reignite. This was until he filled in the ditch the following year and started carrying out work to the disputed area. The ditch and the area of land he was carrying out work on was the subject of the earlier dispute so I think he ought to have been reasonably aware this would reignite matters which were in existence before the policy started. In light of this, I think that by 2021 Mr W did take out insurance for something he ought to have been aware would lead to a claim on the policy. And because he's not entitled to cover for those kinds of situations, I don't think it's fair for NFU to fund the matter now.

When reaching this conclusion, I take Mr W's point that the original matters complained of would've been time barred. What isn't however time barred is any new matters that occurred in 2021 and beyond for limitation purposes- in this case new trespasses complained of. And given the position of the boundary still remains in dispute, I take the view that the matter is

essentially the same dispute that occurred in 2011, irrespective of Mr W's ownership of his land at that time."

I asked both parties to provide me with any comments and evidence they wanted me to consider in response to my provisional findings. NFU haven't responded but Mr W has. He doesn't agree with my findings and would like me to reconsider the position. He's made the following points:

- He doesn't recall the details of the dispute in 2011, which is before he owned the property. The chronology was put together by his son.
- He didn't remove and put up another fence, the landlord did this. The dispute with his neighbours was with his landlord and not him.
- In 2021 he decided to tidy his garden and replace the rotten fence. In doing so the ditch on his land (as determined by a chartered surveyor's report he obtained) was filled in and a fence erected on the correct boundary. This is what led to the dispute.
- He's received advice to say he can't be held responsible for something that happened to someone else before he owned the property.
- The panel firm is instructed by NFU so the conclusion they've reached is not impartial. His own Solicitor came to the opposite conclusion.
- The term relied on by NFU is unfair.
- The compensation offered by NFU amounting to £250 isn't enough as he was told on three occasions he was covered by the policy. He appointed a Solicitor on that basis and now has bills of over £10,000 to pay.
- NFU have admitted they were negligent, and their claims handlers said their staff needed retraining so £250 isn't enough.

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 remain of the view that Mr W's complaint should not be upheld.

Mr W says that he can't recall the details of the dispute in 2011 and that he wasn't involved in it- this was between his landlord and his neighbours. But that's not consistent with his pleaded case. In his Defence, Mr W states that in early 2011 he removed the original fence along the north-west and north-east boundaries and replaced it with a new fence in the same position. He also says that after his neighbours removed the new fence, he went on to erect a temporary fence on his land along the edges of the ditch on his side of the north-west boundary. The Defence contains a signed statement of truth dated October 2022. So, I'm not sure why Mr W now says he doesn't remember what happened in 2011 or that the dispute wasn't with him and was with his landlord. He was clearly involved in the 2011 dispute. Indeed, that is the basis on which he's advancing his Defence and seeking cover for. As such I don't agree with his recent assertions.

Equally I've not seen anything that persuades me that the claim for which he was seeking cover was one that arose out of the events that took place in 2021. I've addressed the reasons for this in detail in my provisional decision.

I appreciate Mr W's submissions that he's received advice that he can't be held responsible for something that happened to someone else before he owned the property. But he was involved in that dispute, so I can't see how that applies. And as I said before, his neighbours could have litigated against him at the time in trespass whether or not he owned the property. Whilst the more obvious person to claim against might have been his landlord at

that time, the events set out in the Defence support that the landlord didn't seem to be involved at all other than owning the land Mr W was a tenant of.

Mr W says the conclusions reached by the panel firm aren't impartial because they're instructed by NFU. Whilst I don't agree (because the panel firm are an independent firm of professionals with their own codes of conduct and a separate regulator) I don't think that matters. That's because I have determined the outcome of Mr W's complaint rather than the panel firm. And I haven't done that by relying on their advice. Rather I've looked at the underlying facts of the claim and the policy terms and all the evidence presented by both parties to make that determination.

On the issue of compensation, NFU have not said they've been negligent in how they handled Mr W's claim. Rather they've said that the service they provided fell short of the level they'd ordinarily expect. This is because they failed to communicate properly with Mr W's Solicitor's after their report was issued. I appreciate NFU first thought this was a claim that was covered when it should have been clear to them that it wasn't. But when they received the panel firm's report, they did turn down cover- albeit later than they should have. That said, I haven't seen anything that supports that NFU agreed to cover the £10,000 in costs Mr W has said he's incurred. Nor indeed any of his Solicitors costs before the report was provided. I imagine much of the costs were incurred after cover was turned down. If Mr W didn't want to continue with the litigation at that point, he could have asked his Solicitor to look at ways to settle the claim. I don't know what the status of the claim currently is or whether it's continuing but given NFU didn't agree to the costs Mr W has incurred, I can't say they're responsible for this. And I think the offer of £250 for poor communication is adequate in the circumstances.

Finally, Mr W has made various submissions about the term that's the subject of this dispute being unfair. This term is very common in before the event legal expenses insurance policies like the one Mr W has. We don't take the view that it's unfair because this sort of cover is in place to protect against events that a policyholder doesn't have reasonable cause to know is likely to happen. For the reasons I set out in my provisional decision, I think Mr W would have known that filling in the ditch on the disputed boundary would reignite an old dispute. Because of this I don't think NFU needed to cover his claim, nor do I think it was fair for them to do so.

My final decision

For the reasons set out above, I don't uphold Mr W's complaint against The National Farmers' Union Mutual Insurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 November 2023.

Lale Hussein-Venn
Ombudsman