

## The complaint

Mr P's complaint is about The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual's ("NFUM") refusal of their claim under the legal expense section of their home insurance policy.

NFUM are the underwriters of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As NFUM has accepted it is accountable for the actions of the agent, in my decision, any reference to NFUM includes the actions of the agents.

## What happened

A firm of solicitors brought a legal claim against Mr P for unpaid fees from 2015. Mr P represented himself in the proceedings and tried to counterclaim on the basis the solicitors had been professionally negligent. I understand there was a hearing in November 2021 following which the judge found against Mr P and he was ordered to pay the solicitor's outstanding fees and the legal costs of the proceedings. Mr P had to pay around £56,000 in total.

In January 2022, Mr P says he was reviewing his policy and realised that he had legal expenses cover. Mr P therefore contacted NFUM and submitted a claim for indemnity for the order made against him.

NFUM refused to pay the costs. It said the policy requires claims to be notified as soon as reasonably possible and Mr P had not notified it of the claim until after the proceedings had been concluded. NFUM said it therefore had no opportunity to assess if the claim was one that would be covered under the policy and whether Mr P had reasonable prospects of successfully defending the claim made against him. NFUM also said there were exclusions of cover for costs incurred without its prior approval. It refused to make any payment towards the costs.

After further communications, NFUM agreed to set up a new claim to consider whether there might be cover for the costs of a legal claim for professional negligence against Mr P's former solicitors.

DAS instructed one of its panel solicitors to assess whether this claim had reasonable prospects of success. The panel solicitors concluded that Mr P's allegations of negligence against his former solicitors had already been addressed by the court when considering the costs issue. The panel solicitors therefore said Mr P could not bring a claim now on the same issue.

Mr P is not happy with this. He said he was not aware the legal expenses cover was included with his home insurance, he and his wife are pensioners and "*not savvy with insurance small print*". He said it would be an injustice if his claim was not covered due to his ignorance about insurance procedure; he had purchased legal expenses cover and the benefit of the cover should not be withheld just because a procedure wasn't followed.

DAS maintained its position on the claims. It also says the policy documentation is clear that it includes legal expenses cover and Mr P was sent the policy documentation each year when it renewed.

One of our Investigators looked into the matter. The Investigator didn't think that NFUM had acted unfairly in refusing to pay the amount that had been awarded against Mr P, as it had acted in line with the policy terms. The Investigator also didn't think NFUM had acted unfairly in relying on the panel solicitor's advice about the potential claim for professional negligence against Mr P's former solicitors. The Investigator said the policy cover including the legal expenses section of cover had been clearly set out in the documentation provided to Mr P and given this she did not think NFUM needed to do anything more.

Mr P does not accept the Investigator's assessment, so the matter has been passed to me.

Mr P has made a number of points in response to the Investigator and in his original complaint. I have considered everything he has said but have summarised his main points below:

- He only sought insurance cover for his property and third-party liability for visitors. He didn't know that NFUM had bundled legal expenses insurance with the policy. NFUM is hiding behind a procedure (the requirement to enquire with it before any legal action) which is *"at best unfair and at worst calculated"*.
- The claim procedure is to mitigate losses on unsuccessful claims not to exclude valid and fair claims.
- The panel solicitor did not assess the merits of the potential claim for professional negligence and did not even open the files. She simply noted it had been judged and now could not be re-examined.
- At the time of the legal proceedings, it was the middle of a worldwide emergency because of the Covid-19 pandemic. He and his wife were vulnerable and self-isolating. This was not a normal situation.
- NFUM sent him a communication saying it was setting aside a special Covid-19 fund for vulnerable customers and it should pay the costs he is liable for out of this fund *"NFU should honour their pledge to help during Covid crisis and recognise that their customers were ... more concerned about surviving than reading the small print. The Ombudsman is there to make NFU honour, from their special Covid fund, their pledge which overarches their policies"*.

### **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 have come to the same conclusion as the Investigator, and for essentially the same reasons.

### **Claim for payment of costs order**

Mr P's policy provides cover for the reasonable legal costs and expenses involved in certain specified legal disputes. This includes breach of contract, such as the defence and counterclaim Mr P was involved in with his former solicitors.

The reasonable costs and expenses covered could include any third party's costs the policyholder is ordered to pay. But the policy does not cover any damages the policyholder is ordered to pay, so it would not cover the outstanding fees Mr P was ordered to pay his former solicitors (which I understand was around £28,000 of the £56,000 Mr P was required to pay).

Like all insurance policies, the cover is subject to various terms and conditions. The terms in Mr P's policy that are relevant to his claims state:

*"WHAT WE WILL NOT PAY*

*1) Late reported claims*

*A claim where an INSURED PERSON has failed to notify ... [NFUM's agent] of the insured incident within a reasonable time of it happening and where this failure adversely affects the REASONABLE PROSPECTS of a claim or ... [NFUM's agent's] consider OUR position has been prejudiced.*

*2) Costs DAS have not agreed*

*COSTS AND EXPENSES incurred before ... [NFUM's agent's] written acceptance of a claim...*

*4) Legal action we have not agreed*

*Any legal action an INSURED PERSON takes that ... [NFUM's agent] or the REPRESENTATIVE has not agreed to, or where an INSURED PERSON does anything that hinders ... [NFUM's agent] or the REPRESENTATIVE."*

These terms, or similar, are common to most if not all legal expenses insurance policies and I do not consider them unfair or unreasonable. It is understandable that NFUM would want a degree of control over costs incurred and any legal action taken which might expose it to risk.

Mr P says his claim would have been covered but for his failure to follow correct procedure and notify NFUM of the matter at the outset and so these terms should not be applied to his claim.

However, these are not policy conditions, these are clear policy exclusions. It isn't a 'condition' of the policy that the policyholder gets prior approval of legal costs and expenses but rather any costs incurred without NFUM's prior approval, or where legal action has been taken without NFUM's agreement, are simply excluded from cover.

Mr P's claim is for costs incurred without prior agreement from NFUM, and the result of legal action it had not agreed to. I am therefore satisfied that the exclusions 2) and 4) above apply to Mr P's claim.

In addition, the policy term 1) above excludes claims for matters where the insured incident, which might give rise to a legal claim, has not been reported to NFUM within a reasonable time, unless there has been no prejudice to NFUM's position as a result of the delay.

If the claim had been notified in a reasonable time after Mr P became aware of it, NFUM would have been entitled to assess it to see if there were reasonable prospects of Mr P's defence and counterclaim succeeding. NFUM wasn't given the opportunity to assess the claim and agree what action to take.

It isn't hard for a legal expenses insurer to establish that they've been prejudiced by not being involved in the claim earlier. NFUM has said it is unlikely the case would have got to

trial, if it had been involved. But, as stated as these costs are simply excluded under the terms 2) and 4) above, NFUM doesn't have to show it was prejudiced by the late notification.

Having considered all the circumstances, I do not therefore think NFUM has acted unfairly or unreasonably in refusing cover for the adverse costs order made against Mr P.

#### Knowledge of the cover

Mr P also says the terms should be disregarded because he was not aware of the policy cover at the relevant time and it would be unfair in those circumstances for him to not have the benefit of the cover.

Mr P took out home insurance with NFUM for a number of years. This was on a non-advised sale, which means that NFUM did not give him advice about the suitability of the insurance cover. NFUM had an obligation to provide him with clear information about the policy and its main terms.

I have considered the documentation provided to Mr P. It renewed annually and the first page of each renewal notice letter said

*“Personal Legal Expenses  
Included with your Legal Expenses cover, you have unlimited access to a personal legal advice telephone helpline to support you with everyday legal issues affecting you and your family.”*

The document goes on to detail that there was legal expenses cover of up to £50,000. I think this is sufficiently clear and I do not agree that this was “*insurance small print*”. Mr P may not have realised he had legal expenses insurance but I do not think this was due to anything NFUM did, or did not, do.

While Mr P may feel it is unfair that he didn't realise he had this cover which *might* have assisted him in these proceedings, as this was not due to anything NFUM did wrong, I do not agree that this means NFUM shouldn't rely on clear and unambiguous policy terms.

Despite my sympathy for Mr P's position, I do not consider that NFUM has done anything wrong.

#### The claim for professional negligence against former solicitors

NFUM agreed to consider a potential claim for professional negligence against Mr P's former solicitors. It instructed one of its panel solicitors to assess whether such a claim would have reasonable prospects of success.

It was a requirement of funding under the policy that any claim had reasonable prospects of success, which was defined as:

*“For civil cases, the prospects that the insured person will recover losses or damages.... make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%.”*

This requirement is also found in virtually all legal expenses policies and I do not consider it inherently unfair.

The panel solicitor's opinion was that the claim didn't have reasonable prospects of succeeding. They said:

*“[The solicitors] ... issued proceedings against him for outstanding fees and he defended the claim and counterclaimed citing negligence. He subsequently lost the case. I don't believe that the counterclaim was put to them very well but it was dealt with and as such he cannot now proceed with a claim against them as it would be an abuse of process.”*

Mr P says the panel solicitors didn't consider the merits of any legal action and didn't even open the files. However, the quote above is their conclusion on the prospects of any action. I think what they said is sufficiently clear: that there is no prospect of Mr P being able to make a claim now for professional negligence against his former solicitors. I am satisfied that NFUM is entitled to rely on this opinion and does not therefore have to take this any further.

#### Covid support fund

Mr P also says that NFUM made a pledge of support for customers who were vulnerable and facing financial during the Covid-19 pandemic. He says this overarches the terms of the policy and this Service should be ensuring it honours that pledge.

NFUM made some changes to existing insurance policies and processes and set up a fund to assist customers directly affected by the pandemic, and those suffering financial hardship. I do not agree that this extends to NFUM agreeing to pay non-Covid-19 related claims that would not otherwise be covered. In any event, any payment from such a fund is discretionary and I cannot make NFUM pay any part of that fund to anyone.

My role is to determine whether NFUM has dealt with Mr P's claims fairly and reasonably and in line with the policy terms. For the reasons set out above, I consider it has done so and I do not require it to make any payment to Mr P.

#### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 January 2024.

Harriet McCarthy  
**Ombudsman**