

## **The complaint**

Mr M complains about The National Farmers' Union Mutual Insurance Society Limited's (NFU) handling of a motor insurance claim.

Any reference to Mr M or NFU includes respective agents or representatives. I'm aware that the named driver was driving at the time of the accident, but as Mr M has brought the complaint and the policy is in his name, I'll be referring to him throughout the decision.

## **What happened**

In summary following an accident, Mr M is unhappy that NFU has settled his claim by way of a 50/50 split liability, without his consent or agreement. Mr M says the matter should've gone to court so he feels NFU should reimburse 100% of his losses because of its decision not to allow this.

Mr M is also unhappy that he got a lower value for his vehicle, which he says is due to the poor repairs conducted on it.

NFU says its policy allows it to take control and negotiate a claim on the insured's behalf and it has to take into consideration the expected outcome if the case went to court.

With regards to the repairs and value, NFU has said as Mr M is no longer the owner of the vehicle it is unable to investigate the repairs or rectify them if needed. It also points to the policy which also confirms it does not cover loss of the vehicles value due to repairs.

Our Investigator didn't uphold Mr M's complaint. Mr M has said he understands that NFU has settled liability with the third party in the way it has, but without his consent to this he feels it is unfair for it to then not pay him 100% of his losses as a court hasn't made the decision on liability.

So, the complaint has been passed to me, an Ombudsman, to make a final 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.

First, I want to recognise the impact this complaint has had on Mr M. I recognise Mr M feels very strongly about the complaint, and the way the claim has been settled. And I've carefully considered this alongside Mr M's testimony explaining why he feels the claim should have gone to court. As Mr M has a clear and definitive opinion on this, I can appreciate the upset and frustration he will no doubt have felt when he was told the claim would be settled on a split liability basis.

As NFU were acting on Mr M's behalf, as his insurer, I can understand why he would expect NFU to act in his best interests. And as they have settled the claim in a way, he doesn't

agree with, I can understand why he feels unfairly treated and wants NFU to pay 100% of his losses.

But for me to say NFU should do something more, such as change the way the claim has been settled, I first need to be satisfied NFU have done something wrong. So, I'd need to be satisfied that NFU failed to act in line with the policy terms and conditions. Or, if I think NFU did act within these, I'd need to be satisfied it had acted unfairly in some other way. And in this situation, I don't think that's the case.

Before I explain why I've reached this decision, I think it would be useful to set out exactly how, and what, I've been able to consider. It's not my role, nor the role of our service, to decide liability on a claim as we don't have the power to do so. So, I won't be speculating on how I feel the claim should be settled, or what happened at the time of the accident. Instead, it is my role to consider the actions NFU have taken, including the way it has reached its decision on liability and whether this was done fairly and reasonably considering the information available to it at the time.

I am unable to consider under this complaint how the uninsured losses are settled. This is because a different business (underwriter) from NFU oversees this part of the policy. So, Mr M would need to raise any issue about the losses with that business in the first instance.

I've seen the terms and conditions of the policy Mr M held. And these explain in the general conditions section, under the section "Control of Claims" that NFU are entitled to "take over and conduct the defence or settlement of any claim. WE will do this in YOUR name, or in the name of anyone else who is insured by the policy." I'm satisfied these terms and conditions make it clear that NFU were able to settle the claim as they saw fit, without the agreement of Mr M. So, I'm satisfied NFU haven't acted outside of the policy when deciding the settle the claim on a 50/50 split liability basis.

But as I've explained above, I've also thought about whether NFU acted fairly when settling the claim in line with the policy. And when deciding this, I've looked at the way it decided liability and if it is in line with what I'd expect an insurer to do in these circumstances.

I recognise Mr M feels his named driver's testimony regarding the accident circumstances, supports his belief the accident was the fault of the third-party. I'm satisfied NFU put this directly to the third-party insurer (TPI) when Mr M initially submitted the claim and so, I'm satisfied they acted fairly and in Mr M's best interests.

NFU were unable to control the TPI's decision to challenge the claim and put forward the idea of settling the claim on a 50/50 basis. At this point, as NFU and the TPI were attempting to settle the claim in a different way, based on differing versions of events from both parties involved in the accident, I'd expect NFU to take time to consider how they should proceed. And when doing so, I'd expect NFU to ensure any steps they took looked to mitigate the costs of the claim, as this is what industry guidelines expect.

To ensure this was considered, I can see NFU instructed a claims inspector to interview witnesses, review all the evidence. And establish potential liability. The claims inspector didn't think liability was the fault of one party. The evidence was then also reviewed by two solicitor firms and the solicitors confirmed that liability could not be wholly attributed to a single party and 50/50 liability would be the most likely outcome if the case went to court. I'm satisfied that the actions taken by NFU are the actions most other insurers would've taken, to ensure it was reasonably considering prospects of success in taking further action and is what I'd expect to see.

As NFU instructed a claims inspector and two firms of solicitors to review the evidence and to give their opinion as experts, I think NFU were fair to then rely on the opinions it received. So, I'm persuaded NFU has fairly considered all the information available at the time of it making its decision. And I won't be instructing it to anything further on this point.

I understand Mr M feels as he didn't get the choice if the matter went to court, that he should be entitled to 100% of his uninsured losses. Unfortunately, that isn't how the policy works and as the claim has been settled on a 50/50 basis then Mr M's insurer that covers the legal expense part of his policy can look to get a proportion of the uninsured losses back. Mr M may be able to ask the insurer to settle on a without prejudice basis which would mean Mr M can still take his case to court to try and recover all losses if he wished to fund the action personally. But as explained above if Mr M is unhappy with how the losses are being settled this would need to be a complaint against the underwriter of that part of the policy and isn't something I can consider in this complaint against NFU.

With regards to the repairs completed on the vehicle. Mr M says that poor repairs devalued the vehicle by around £1,000 when he sold it following the accident.

NFU says that Mr M didn't raise this with it, that he was dissatisfied with the repairs, nor have I seen any evidence that this was raised with it, until after the repairs had been completed and the vehicle had been sold.

I have looked at the policy wording which says under the "Damage to the Car" section what is not insured:

"WE will not pay for:

3) reduction in the MARKET VALUE of the CAR as a result of a repair".

If repairs are of a poor standard, I would expect NFU to look at rectifying this, but from what I've seen Mr M didn't raise this with NFU at the time he received the vehicle back and before he sold it. NFU therefore hasn't had an opportunity to review the repairs and rectify them if it agreed they were below standards. So, I'm satisfied now that Mr M has sold the vehicle it has compromised NFU's position, as it can't now review the repairs to the vehicle. So, I won't be asking NFU to do anything further on this point.

### **My final decision**

For the reasons given above, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 March 2024.

Angela Casey  
**Ombudsman**