

The complaint

R, a business, complain that The National Farmers' Union Mutual Insurance Society Limited ("NFU") has unfairly declined a claim under their commercial property insurance policy.

What happened

R made a claim for storm damage in January 2021. NFU accepted the claim but had difficulties sourcing a contractor due to the pandemic. It agreed to cash settle the claim, which R accepted and they arranged for repairs to be carried out.

In January 2023, R made a further claim on their policy as there was water ingress in the same place as before. A loss adjustor was instructed to inspect the property and it was their opinion that the previous repair had failed. NFU declined the claim on the basis the policy doesn't cover poor workmanship.

R obtained their own expert opinion on the cause of the damage, which agreed with the loss adjustor that the water ingress was due to a failed repair which had been completed to a poor standard.

R accepts the damage is a result of poor workmanship by their contractor. But they say the onus was put on them to arrange a repair and it was unreasonable to expect them to make a judgement on the quality of the work. They say NFU should've inspected the roof before making payment, and it's unfair it hasn't taken any responsibility for what's gone wrong. They raised a complaint, which they brought to our service.

Our Investigator didn't uphold the complaint. She said NFU was entitled to settle a claim by cash settlement, which R agreed to at the time. She didn't think NFU were responsible for making sure the repairs were to a satisfactory standard and as the policy doesn't cover poor workmanship, she didn't think it was unfair for it to decline R's latest claim.

R says they agreed to use their own contractor due to the extreme pressure insurers were facing at that time and they wanted to accelerate the repairs before it impacted their ability to run their business. They didn't know NFU would use it as a disclaimer in any future claim.

As R didn't agree, the complaint has been passed to me to decide.

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.

Under the terms and conditions of this policy, NFU are entitled to decide whether to settle the claim by reinstatement, replacement, repair, or a payment of money. There's nothing inherently unfair about an insurer cash settling a claim – which is what happened in 2021.

In the circumstances, this seems to have been the most appropriate route given the alternative could've led to the claim not progressing for some time. And, based on what both

R and NFU has told me, it seems R were keen for the claim to move forward quickly to avoid any impact to the running of their business.

As a result, NFU isn't liable for the poor works carried out by R's contractor. I appreciate R says there were limited contractors available at that time due to the pandemic, but as NFU wasn't involved in hiring them, I can't say it was responsible for ensuring they were a reputable firm or, as R suggests, checking the quality of their work. This isn't something we'd expect an insurer to do when they cash settle a claim and in this particular case, I can't see that NFU needed to do this.

I do think NFU could've done more to explain the consequences to R of instructing their own contractors. NFU know it isn't responsible for ensuring that an effective and lasting repair was undertaken in the same way it would've been if it had arranged the repair under the policy. And it had an obligation to ensure R were aware of this.

But I don't think this would've changed anything even if NFU had been clearer about this. I say that because the works to repair the roof had already begun before NFU's loss adjustor attended the property and R has told us they wanted to accelerate repairs. So I'm not persuaded R would've waited an indefinite amount of time for NFU to arrange repairs. NFU did email R to explain that R would be the client in the relationship with the contractor, and I haven't seen anything to suggest R queried what this would mean in respect to their claim or if anything were to go wrong.

So whilst I recognise that, in hindsight, this will seem of key importance to R, I'm not satisfied R's decision to accept a cash settlement for their claim would've been any different had NFU been clearer about the consequences of this at the time.

I appreciate R will be disappointed with the outcome I've reached. But although I don't consider NFU responsible for this latest claim for a failed repair, that's not to say R doesn't have any recourse against their contractor for poor workmanship and they may want to take legal advice on what avenues are available to them in this regard.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 13 June 2024.

Sheryl Sibley
Ombudsman