

The complaint

W, a limited liability company's complaint is about a claim it made on its The National Farmers' Union Mutual Insurance Society Limited ('NFU') business protection insurance policy for loss or rent arising out of damage to its property.

W says NFU treated it unfairly.

W is represented in this complaint, but for ease of reference I shall refer to all submissions as being its own.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

The specific complaint I'm addressing here is whether W has provided NFU with enough information to support that it has suffered a loss that is covered under the policy and whether NFU should have done anymore to move that claim forward given the deadlock reached by the parties. That's because the crux of W's complaint is that NFU did not move its claim forward, but instead continued to ask for more information to validate its claim.

If W remains unhappy with anything other than the matter I'm determining, including potential issues of fraud, or concerns about limits to indemnity, it should raise this with NFU in the first instance before it can raise a complaint with the Financial Ombudsman Service.

I issued a provisional decision in June 2024 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 uphold W's complaint but for different reasons to those set out by the investigator.

Throughout the course of the claim NFU asked for various pieces of information to help validate the claim, including the date W's tenants moved out, a copy of the tenancy agreement, details of the letting agent who set up the tenancy, details of the attempts made to re-let the property, names and contact details of the previous tenants. W says the requests for information by NFU were excessive and they should have just asked for their company accounts to validate the loss being claimed which W says it offered in correspondence. On the other hand, NFU say they needed to establish whether a loss had occurred at all.

In his latest view the investigator said that NFU should have asked for W's company accounts to establish whether there was a claim for business interruption at all because the policy terms outlined how such claims would be settled and the information contained within the company accounts should have helped to support that. That was because the accounts would show W's income was for the 12 months preceding the loss it was claiming for as well

as its income and outgoings. The investigator said NFU should assess W's claim in light of this document now.

NFU's latest position is that the company accounts make little difference to the claim and wouldn't help validate it. Their concern is that W can't establish its property was occupied by tenants at all. So, they say they're not just trying to validate W's income but also that tenants were physically living in the property for the period claimed. NFU also say that it's of concern to them that they also can't validate W receiving rent at all for the period being claimed with reference to any evidence in the form of receipts, statements or some other record that underlie the company accounts supplied. In addition, they say the company accounts are unaudited, so they have not been professionally reviewed and checked. As such they don't provide the same level of accuracy or integrity than if they had been.

I've considered NFU's position and W's. NFU's final response letter to W sets out that a decision regarding the loss of rent claim had yet to be made and the claim has yet to be validated. Reference is made to further information being requested in order to try to progress the claim. It's clear to me that the parties had reached a deadlock on this issue when this complaint was brought to us. NFU had expressed considerable concerns about the information W had presented but they did not decline the claim. Without doing so with reasons, I can't determine whether I think the information supplied by W is enough to support its position or whether NFU is right to turn the claim down. And given the time that has elapsed since this claim was made and the considerable correspondence between the parties on the information NFU has said is necessary, I take the view that NFU should have done something more in this case to bring matters to fruition. By that I mean they should have considered the claim on the basis of the information they had and made a decision about it. Without declining the claim and expressing where they stood and on what policy terms they were relying on, W wasn't able to decide what to do next.

From what they've said, NFU feel there isn't enough to support a claim for loss of rent for several reasons. But it's unclear which of those reasons NFU are relying on when they say they're not able to take the claim forward. Without NFU confirming its position together with reasons W can't make a decision about whether it's able to supply the information requested or whether it thinks the decision is wrong and wishes to challenge it. Until that happens, the claim continues to run with debate about matters which may or may not make a difference to the outcome of NFU's assessment, which isn't helpful to either party. As an insurer, it is NFU's responsibility to deal with claims promptly and fairly. In this case, leaving the matter open ended without finality in the form of a claims decision with clear reasons is in my view unfair on W.

I appreciate NFU are concerned that W's claim might be fraudulent in this case. Whilst I'm not determining this issue here, I don't think this makes a difference to my finding that NFU should have set out their position by either accepting or declining the claim rather than leaving the matter to run and become the subject of continued debate. Whether they seek to do so on the basis that they feel the claim is fraudulent is a decision for NFU to make.

For these reasons, I uphold W's complaint and direct NFU to put things right as I've set out below.

Putting things right

To resolve W's complaint, The National Farmers' Union Mutual Insurance Society Limited should reconsider W's claim in light of all of the information W has supplied, including its unaudited company accounts and confirm whether they're prepared to pay it. If not, then The National Farmers' Union Mutual Insurance Society Limited should explain clearly why it is not covering the claim and set out the basis on which it is declining it in accordance with the

policy terms.”

I asked both parties to provide me with any more comments or evidence they wanted me to consider in response to my provisional findings. Both parties have now responded. W has accepted my provisional decision, but NFU has not. In summary, they've made the following points:

- Their strategy was for W to present new information on the loss of rent claim rather than decline it.
- Previous requests for the tenancy agreement from W took two years to materialise but they were mindful that W had limited access to its documents, so they didn't think it was fair to decline its claim.
- They have set out what they needed from W to properly consider the claims in various items of correspondence and W only provided further evidence after it brought its complaint to the Financial Ombudsman Service.
- The further information they are being asked to review was only sent to them through the Financial Ombudsman Service.
- W is financially astute and represented by lawyers and insurance experts. The communications sent to it were tailored and have been reasonably clear on what was required to substantiate its claim.
- Declining the claim prior to W being given the opportunity to provide new information would have been unreasonable.

NFU have provided copies of both internal correspondence to support their position as well as recent correspondence between the parties.

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 W's complaint should be upheld in the same way I set out within my provisional decision for essentially the same reasons.

When reaching this conclusion, I have taken into account what NFU says about not wishing to decline a claim unfairly and potentially prematurely, but rather leaving it open to await further evidence. But in this case, I don't think that helped progress matters.

As NFU have said W was professionally represented. By the time W made its complaint to the Financial Ombudsman Service, the volume of correspondence between the parties on every aspect of the claims advanced by W became unproductive. W wasn't any further forward in persuading NFU that it had adequately supported its claim and NFU wasn't satisfied that W had provided enough information to do so. As NFU have said, they set out their position several times in correspondence to W's representatives. In light of that I fail to see why NFU didn't simply draw a line in the sand and decline the claims based on everything W had provided. Had it done so, this would have seen an end to the considerable correspondence between the parties and W would have been clear on what NFU's position was, with reference to the policy terms, such that it would have either decided to supply the information requested of it or complained about the unfair declination of its claim to the Financial Ombudsman Service. By leaving matters open for so long, NFU allowed matters to escalate to no productive conclusion. The fact that W was professionally represented to my mind makes no difference. Given the tone and content of correspondence between the parties, it ought to have been clear to NFU that communications were not leading to any productive outcome and as such they should have clarified their position in finality on the claim. As such I think they should do so now.

I appreciate that W has provided further information to NFU since it brought its complaint to the Financial Ombudsman Service and not before. But that doesn't mean that the conclusion I've reached is unreasonable. Rather my award takes into account the current position as set out to me by both parties, with a view to bringing finality to this dispute.

Putting things right

To resolve W's complaint, The National Farmers' Union Mutual Insurance Society Limited should reconsider W's claim in light of all of the information W has supplied, including its unaudited company accounts and confirm whether they're prepared to pay it. If not, then The National Farmers' Union Mutual Insurance Society Limited should explain clearly why it is not covering the claim and set out the basis on which it is declining it in accordance with the policy terms.

My final decision

I uphold W's complaint against The National Farmers' Union Mutual Insurance Society Limited and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 29 July 2024.

Lale Hussein-Venn
Ombudsman