

## **complaint**

Mr S is complaining that The National Farmers' Union Mutual Insurance Society Limited (NFU) hasn't covered a claim he made on his commercial vehicle insurance policy. He also thinks it mis-sold him the policy.

## **background**

Mr S operates as a chicken and egg farmer on a farm owned by his mother. In June 2018 he damaged an outbuilding, designed as a hen house, when he was reversing the tractor and dump trailer down a lane towards the hen house. He accidentally hit the rear end of the hen house causing significant damage.

NFU arranged for a claim's investigator to discuss the claim with Mr S and Mr S signed a witness statement setting out what he says happened. The investigator said Mr S explained to him that the hen house was being used for laying eggs. And he says Mr S told him each hen house contained around 3,150 hens. Mr S confirmed that no hens were injured as a result of the incident.

NFU said that the policy didn't cover him for loss or damage to any buildings he damaged which were in his custody or control. And it thought that the damaged hen house was in his custody and control. It said that there was separate cover for the hen house itself. But it said that Mr S hadn't taken out accidental damage for these buildings, so it said that there wasn't cover for the damage incurred.

Mr S was unhappy with NFU's decision. He said that the hen house wasn't being used at the time. And he says his mother was the owner, not him. He was also unhappy with the level of cover he had and he thought NFU had mis-sold the policy to him. NFU reviewed the claim again, but it thought Mr S's statements were inconsistent with what he said at first. It still thought the claim wasn't covered. So Mr S asked this service to step in.

I issued a provisional decision not upholding this complaint. And I said the following:

*"There are two issues for me to decide here:*

- 1. Was it fair and reasonable for NFU to decline Mr S's claim; and*
- 2. Was the policy mis-sold and, if so, did this cause Mr S to lose out.*

*I shall deal with each point separately.*

### *rejection of the claim*

*Under Mr S's insurance policy there was potential cover for the damage under both his agricultural vehicle cover section and also the contents section which covered the outbuilding specifically.*

*However, the insurance documents sets out that Mr S didn't take out accidental damage cover for the contents – including the hen house. It only provided cover for fire and theft. The hen house was accidentally damaged. So Mr S's policy doesn't cover the loss under this section.*

However, Mr S didn't own the hen houses as they were owned by his mother. And the policy does cover loss or damage that Mr S accidentally caused to another person's property. So as the hen houses were owned by someone else, there was potentially cover under this. But the policy also specifically excluded cover for "damage to any vehicle, trailer, disabled mechanically-propelled vehicle, motorcycle or property which is in the custody or control of anyone insured by this section". NFU says that the hen house was in Mr M's custody and control at the time. So it said the loss was excluded under the terms of the policy.

Mr S says that the hen house wasn't being used at the time. He's provided an invoice which says that he'd sold around 7,000 hens in August 2017 and a statement from another person confirming that the hen houses weren't being used from August 2017. But I think this is different to what he initially told NFU. I think the statements made at the time of the claim are most likely to be the true version of events. And I have a number of concerns in respect to this:

1. In Mr S's signed statement he said "I use the poultry houses on a daily basis for the egg producing side of the business." I think that this is a contradiction to his statement that he'd sold the hens. Given he was making a claim for the damaged hen house, I think it's unlikely he'd have said this if he wasn't using it.
2. I note Mr S said that he was only using two of the hen houses. But I think a fair inference from the statement that Mr S made on the signed statement – which was done at the time of the claim – suggests that all houses were being used. I would have expected Mr S to say that he was using two of the houses but the one that he damaged wasn't being used at the time if that was the actual scenario.
3. The claim's investigator says that Mr S told him he was going to the hen house to clear out the pits. But he wouldn't have had to clear out the pits, if the hen houses hadn't been used for around 10 months – as Mr S now says.
4. In Mr S's email to the investigator he said his mother was planning on putting hens into the house from March 2017 until she was no longer fit and her plan was then to rent it out as caravan storage. But in his signed statement he explained that his mother didn't get involved in the daily day to day running of the farm. He said that he ran the farm and his mother had no financial interest in it. I think a fair inference from this has to be that the hen house in question was in Mr S's custody and control.

I've taken Mr S's comments into account. But I can't ignore the statement that Mr S signed at the time. And I think it's most likely that the hen house was in his custody and control at the time he damaged it. Given this, I don't think it was unfair or unreasonable that NFU said the claim wasn't covered.

#### was the policy mis-sold to Mr S?

The wording of the policy documentation suggests that NFU recommended the policy to Mr S. So it needed to get a full understanding of Mr S's requirements to assess what policy was suitable for him.

I can see that Mr S had a choice of three levels of cover:

1. Fire and theft only;
2. Fire, theft, storm and flood cover;
3. Fire, theft, storm, flood and accidental damage cover (all risks).

*Mr S had all risks cover for his agricultural machinery – i.e. including accidental damage. But he only had fire and theft cover for the rest of the insured items. I think a fair inference from this is that NFU would have discussed the various levels of cover available to Mr S and he would have chosen to only have fire and theft cover for the hen houses.*

*While accidental damage was subsequently caused to the hen houses, it doesn't mean that the level of cover Mr S took out was unsuitable. I think it's most likely that Mr S concluded at the time that he didn't need accidental damage for the buildings. I think NFU recommended a policy that was suitable for the cover Mr S asked for.*

*I also note that, during a review of the level of cover Mr S had, NFU recommended that Mr S added storm and flood cover for the buildings. But he didn't do so.*

*Ultimately, I haven't seen enough to say that NFU mis-sold the policy to Mr S."*

Mr S didn't accept my provisional decision. And he raised a number of points. But in particular he raised the following:

1. The policy covers damage he causes to other people's property. He says the damaged hen house was owned by his mother, so he says it should be covered.
2. He maintains that he wasn't using the hen house at the time he damaged it. He says he was using it three months before the incident. He says he's provided letters and documentation from two companies which he says states very clearly when the house was depopulated and that there was no more hens put into it. And he says that they weren't putting anymore hens into it for him to use.
3. He said he had been using all three houses at one time. But he said his statement wasn't done at the time of the claim, but around a month later. He said it was written out by the insurance investigator. And he says it's not his fault if it doesn't say specifically the exact dates and which hen house he was using. He said he can only answer what he was asked.
4. He says the investigator took pictures of the site which show the house was empty. He thinks that the statement made by NFU was too vague.
5. He queried where he said that he hadn't used the hen house for 10 months. He said the hens were removed in August and the event started in November which is three months later.
6. He said his email to the investigator didn't say his mother was putting hens in the house from March 2017, but from March 2018. He said it would have been impossible for her to put hens in it in March 2017 as he was under contract with the house until August 2017.

Mr S's mother also provided a written statement which also said that she intended to start running the hen house. And she says the hen house was depopulated in line with her instructions in August 2017. She said that she had in effect evicted Mr S from the hen house in August 2017, so he didn't have custody or control of it at the time of the incident. She maintains that Mr S didn't have any hens in the building at the time of the incident and that it was no longer in his custody and control.

NFU responded to Mr S's further comments and raised a number of points. But in particular it said that, while there weren't any hens, this was some time after the incident. And it said the hen house was inhabitable at the time of inspection to the damage caused. It said Mr S advised that the hen house was used for laying eggs and each hen house contained 3,150 hens. It said when questioned Mr S confirmed no hens were injured as a result of the incident but it says he didn't suggest this was because the house was empty.

NFU also commented that Mr S had accepted responsibility for insuring the outbuildings and the hen houses in their entirety for the purposes of his business. It said that there weren't any exclusions for the premises or buildings. And it said that he hadn't excluded any of the hen houses.

Finally, it referred to Mr S's signed statement which said that Mr S had told the investigator:

*"7) Although I run the farm and my Mother has no financial interest in it, she still owns the land and the buildings and the Deeds for the property are still in her name.*

*10) use the poultry buildings on a daily basis for the egg producing side of the business*

*11) don't pay rent to my mother for the use of the land or buildings."*

NFU maintains that none of the information that Mr S is now referring to was mentioned when the investigations were being carried out and were only raised when the claim was declined. And it thinks more weight should be placed on Mr S's initial statement.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken all of Mr S's further comments into account, but I've still decided to not uphold this complaint. And I'll now explain why.

Mr S has said that the policy covers accidental damage he caused to another person's property. He said the hen house was owned by his mother. So he thinks the claim should be covered. I agree with him that the policy does cover accidental damage to property owned by another person. But the policy also specifically excluded cover where the property was in Mr S's custody and control. It was my opinion in my provisional decision that the hen house he damaged was in Mr S's custody and control at the time. And Mr S's further comments haven't dissuaded me from this.

The issue in this case is quite simple – was the hen house in Mr S's custody or control at the time of the incident? Mr S has provided a lot of information which he says shows that he wasn't in control of it any longer. But I still think this is in contrast to the statements he made to the claim's investigator at the time of the incident.

I think statements made at the time of the incident are generally more persuasive and reliable. And I can't ignore what he said in them – in particular that he said he runs the farm and his mother had no financial interest in it. There is a clear inference from his statement that he was responsible for the full running of the farm and that included the hen house he damaged.

Mr S has queried why I said the hen houses had been empty for 10 months, when they had been empty for three months. I apologise for any confusion here. But even if they had only been empty for three months, I still don't think he wouldn't have had to clear out the pits, if the hen houses hadn't been used for around three months.

I don't dispute that it may be that his mother intended to start using the hen house again. But I haven't seen enough to show that she had started to do so at the time of the incident. And given Mr S's statements made to the investigator which he signed to confirm were true, I can't say that on balance, Mr S wasn't in custody or control of the hen house.

Taking everything into consideration, I don't think NFU's decision to decline the claim was unfair or unreasonable.

**my final decision**

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 May 2019.

Guy Mitchell  
**ombudsman**