

The complaint

Mr B complains about how Union Reiseversicherung AG dealt with one of his claims against his travel insurance policy. Reference to URV includes reference to its agents.

What happened

In March 2019, Mr B bought an annual travel insurance policy with URV. The policy started on 29 April 2019 and ended on 28 April 2020.

Mr B's husband, Mr L, planned a trip for Mr B's birthday. Mr B says that on 14 September 2019, Mr L sent a "save the date" email invitation to 52 people to join them from 11-14 June 2020. I'll refer to that invitation in more detail below.

On 15 September 2019, Mr L booked accommodation for 10 June 2020 to 15 June 2020. The booking form said that there were 45 adults in the group. The total cost was €10,950/£9,624.27. On 16 September 2019, Mr L paid a 50% deposit and on 26 February 2020, he paid the remaining balance.

On 17 March 2020, the UK government advised against all but essential travel abroad. On 18 March 2020, Mr L cancelled the trip. Mr B subsequently made a claim against his policy for the total accommodation costs of £9,624.27 and a catering deposit of £230.81. Mr B explained that the accommodation provider had gone out of business and he'd paid the total amount due for the accommodation, which he couldn't get back.

URV settled Mr B's claim on payment of £86.25. It said that was Mr B's proportion of the accommodation costs on cancellation, less the excess due under the policy. URV's calculation was £5,006.34/45 people - £25. URV said that Mr B's policy doesn't cover amounts he has paid on behalf of others or cover the amount he should have been able to recover from the accommodation provider. URV said Mr B's catering provider had offered to change his booking to an alternative date, so that wasn't covered by the policy either.

Mr B wasn't happy about that. He said that all the people invited on the trip were his guests, so he didn't pay on behalf of anyone else. Mr B says that he is out of pocket and he wants URV to settle his claim in relation to the accommodation costs.

One of our investigators looked at what had happened. She didn't think that URV had treated Mr B unfairly in declining the claim. The investigator said that URV had settled Mr B's claim in accordance with the terms and conditions of the policy.

Mr B didn't agree with the investigator and he and Mr L responded in some detail, which I won't set out here in full. In summary, they said:

- They booked accommodation for six days which included two key days of birthday festivities.

- They made it clear to the people they invited that they would cover the lion's share of the expenses and asked for a small financial contribution which they thought would primarily go towards catering.
- They no longer claim for the losses in relation to the catering.
- URV misunderstands the nature of the event and the arrangements between Mr B and his guests.
- It wasn't the case that Mr B was one of 45 people equally benefitting from the property.
- There were not 45 confirmed guests – that was a figure they plucked from the air when asked how many people might attend.
- Mr B didn't book accommodation on behalf of his guests.
- Mr B and Mr L were obliged to pay for the accommodation whether anyone accepted the invitation or not.
- No guests were invited to stay for the entire duration of the booking.
- Their guests would have no contractual relationship with the accommodation provider.
- They want URV to pay Mr B the proportion of the costs he paid, i.e. the entirety of the €5,000 or at least a figure that could be considered the lion's share of that sum.
- Mr B's proportion of the loss is 100% as he's the only person who has any obligation to pay.
- The claim relates to the non-refundable accommodation costs.
- The contra proferentem rule means that URV isn't entitled to choose its preferred interpretation of "*your proportion*" and "*on behalf of*".

Mr B asked that an ombudsman consider the complaint, so it was passed to me to decide. In response to my further enquiries about the contract for the accommodation and the invitation, Mr B said:

- Mr L deals with travel planning and administration. Mr B instructed Mr L to book the accommodation and transferred money from his bank account to Mr L's bank account, but the accommodation costs were paid with joint assets as a married couple.
- They sent "*save the date*" messages to 52 people knowing that not all would be able to attend. The maximum capacity of the accommodation was 50 people. They expected around 40 people to attend.

As Mr B said that he's no longer pursuing his claim for catering costs, in this decision I'm looking at URV's treatment of his claim for accommodation costs.

My provisional decision

On 10 May 2021, I sent both parties my provisional decision in this case. I said that I didn't intend to uphold Mr B's complaint but for different reasons than had been given before. I said:

"the relevant policy terms and conditions

The starting point is the terms and conditions of the policy, the relevant parts of which are as follows:

"You/Your/Yourself/Insured Person(s)

*mean each person travelling on a **trip** whose name appears on the policy schedule and for whom the appropriate premium has been paid [...]."*

*"In the event that **you** have paid for a trip on behalf of other individuals not insured on this policy please be advised that **your** policy only provides cover for **your** proportion of **trip** costs, as opposed to the amount **you** have paid on behalf of others."*

"Section 1 – Cancellation and curtailment

What is covered

*We will pay **you** up to the amount shown in the summary of cover for **your** proportion only of any irrecoverable unused travel and accommodation costs and other pre-paid charges which you have paid or are contracted to pay [...] if:*

- a. cancellation of the whole trip is necessary and unavoidable*
[...]

as a result of any of the following events occurring:

[...]

*5. A government directive prohibiting all travel to, or recommending evacuation from, the country or area **you** were planning to visit or were staying in, as a result of natural disasters (such as earthquakes, fires, tsunamis, landslides, floods, hurricanes or epidemic(s)/pandemic(s))."*

[...]

Special conditions relating to claims

[...]

*5. We will only consider the unused expenses of a person who has taken out insurance cover with Flexicover. For example, if **you** are travelling with someone who is not insured, we only pay **your** proportion of costs, not theirs."*

"General exclusions applicable to all sections of the policy

We will not pay for claims arising directly from:

[...]

10 Tour operator & airline failure

*Any claim that results from the tour operator, airline or any other company, firm or person not being able or not being willing to carry out any part of their obligation to **you** [...]."*

has the claim been declined unfairly?

The relevant rules and industry guidance say that URV has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably.

I don't intend to uphold Mr B's complaint because I don't think that URV treated him unfairly. I say that because:

- Only Mr B is insured under the policy.*

- *Mr L, Mr B's husband, entered into the contract with the accommodation provider. So, it's Mr L, not Mr B who was obliged to pay what was due under that contract. Mr B says that he instructed Mr L to book the accommodation. I've seen nothing to support Mr B's position that Mr L acted as his agent. I'm satisfied that Mr L entered into the contract for the accommodation, not Mr B.*
- *Mr B says that he transferred money to Mr L for the accommodation and that, ultimately, the accommodation costs were paid from joint assets. Based on what I've seen, I don't think that Mr B has shown that he paid the accommodation costs. The extracts of payments Mr B has provided show two payments of £4,000 to Mr L: one on "28 Jan" and the other on "28 Feb". The "28 Feb" payment includes a reference to "BDAY" but there's nothing to link those payments to the accommodation costs, they aren't for the right amounts and the first payment was several months after Mr L made the first payment to the accommodation provider.*
- *Even if I reached a different conclusion about that and decided that Mr B paid or was contracted to pay the accommodation costs, I don't think that URV treated Mr B unfairly in this case. That's because the policy only covers the insured's proportion of irrecoverable accommodation costs and it doesn't cover any claim that results from a third party not carrying out its obligations.*
- *I've noted what's been said about the number of guests. I don't think that URV acted unfairly or unreasonably in proceeding on the basis that the accommodation was for 45 people, as that's what's in the contract for the accommodation.*
- *The policy provides that where the insured has paid for a trip on behalf of others not insured under the policy, cover is limited to the insured's proportion of the trip costs. That's the case whether the payment is made on behalf of others in the expectation of recovering the money, or as a gift.*
- *Mr B says that he would have picked up the "lion's share" of the costs but the invitation he's provided asked guests for "...£200/€225/\$250 per person to cover the house and supplies". I think it's fair for URV to conclude that Mr B's proportion of the unused accommodation costs is 1/45th.*
- *The accommodation provider was obliged to return 50% of cost on cancellation but didn't do so as it had gone out of business. The policy doesn't cover a claim that results from a third party not carrying out its obligations. I think that URV was right to calculate its settlement based on Mr B's share of the non-refundable deposit, rather than the whole cost."*

Responses to my provisional decision

URV said that it had nothing further to add. Mr B didn't agree with my provisional decision. He said, in summary:

- I've rejected evidence of a large payment from Mr B's account to Mr L's account labelled "BDAY" and not accepted that it relates to a large expense relating to a birthday.

- The extracts from the policy which I set out are entirely supportive of their claim. His proportion of the loss is the entire amount owed and to divide by any number other than one (or 2, as they acted as joint agents) isn't in accordance with the terms of the policy and demonstrates that URV is able to choose its definition of terms, contrary to the *contra proferentem* rule.
- Like most married couples in the UK, he and Mr L often act on each other's behalf when making arrangements. They had a direct discussion about booking the accommodation and Mr L sent the email to the accommodation provider. In Marlbray Ltd v Laditi an another [2016] EWCA Civ 476, the Court of Appeal decided that a contract signed by a buyer on behalf of himself and his wife without her authority was valid.
- They consider their assets as joint assets and don't keep detailed records of exact transactions. He didn't transfer the exact amounts to Mr L's account, but approximate sums to help with joint costs on the timeline that their payments were required for their joint booking of the accommodation.
- He and Mr L would have gone to the accommodation whether others attended or not, as they had arranged and paid for it. So, he wasn't paying or claiming on behalf of anyone else.
- URV delayed dealing with his claim until such time as the accommodation provider became insolvent. When he first made the claim, the accommodation provider could have carried out its obligations.
- He agrees that the accommodation provider was obliged to return 50% of the cost on cancellation and that the policy doesn't cover a claim that results from a third party not carrying out its obligations. So, he's asking URV to pay up to 50% of the loss. URV's delay in dealing with the claim led to further losses and anguish.

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.

I quite understand that Mr B is unhappy with my provisional decision: there's a considerable sum at stake. This service resolves disputes between consumers and businesses fairly and impartially. That means we look at both sides and we don't favour one side over another.

I've looked again at the payments from Mr B to Mr L. I accept that the payment of £4,000 on 28 February which includes "BDAY" in the reference related to payment of birthday expenses. But there's nothing to link that payment to Mr L's payment to the accommodation provider. The payments from Mr B to Mr L which Mr B has shared with this service aren't for the right amounts and were several months after Mr L made the first payment to the accommodation provider. It's still not clear to me that the payments Mr B has shown related to the accommodation costs.

The *contra proferentem* rule doesn't assist Mr B in this case as the relevant policy terms are not ambiguous. It's the interpretation of the facts of the case that are in dispute.

I appreciate that it's not uncommon for married people to act on each other's behalf, but whatever discussions took place, only Mr L entered into the contract with the accommodation provider. I'm not persuaded that Mr L acted as Mr B's agent such that I could fairly conclude that it was Mr B who entered into the contract with the accommodation provider, either alone or with Mr L.

The decision by the Court of Appeal to which Mr B has referred is distinguishable on its facts. In that case, the court decided that a contract signed only by the husband remained binding on him alone, even though it named the husband and wife as purchasers. The husband had no authority to contract on the wife's behalf. I don't think that the decision in that case assists Mr B.

Mr B says that he and Mr L consider all their assets to be joint assets. That doesn't alter the fact that only Mr L was contractually obliged to pay the accommodation provider. I remain of the view that it was Mr L who was obliged to pay what was due under the contract for the accommodation, not Mr B. Mr L isn't insured under the policy.

Mr B says that if none of the 52 people invited to the accommodation accepted Mr L's invitation, he and Mr L would have still attended the property. I don't think that it's helpful to speculate about what might have occurred in different circumstances. Based on what I've seen, it was Mr L's intention to accommodate around 45 people in total, according to the contract for the accommodation. Mr L invited 52 people, knowing some wouldn't be able to attend. He asked them to contribute £200/€225/\$250 per person "...to cover the house and supplies". I don't think I can safely conclude that the cost of the accommodation was entirely Mr B's or shared jointly between Mr B and Mr L and that payment wasn't being made on behalf of others. I don't think that URV was at fault in concluding that Mr B's loss was 1/45 of the accommodation costs.

I don't think that URV delayed unduly in settling Mr B's claim. Mr B submitted the claim to URV on 22 March 2020. On 8 April 2020, URV told Mr B that it couldn't deal with the claim so far in advance of the trip departure date, as it wasn't clear at that stage whether the advice about travel would be extended. I think that was a reasonable response given the unprecedented circumstances created by Covid-19. URV settled Mr B's claim on 1 June 2020. The time URV took to deal with Mr B's claim didn't prejudice his position in relation to the accommodation provider, as Mr B didn't have a claim against the accommodation provider. Mr L's claim against the accommodation provider is separate and distinct from Mr B's claim against URV.

For these reasons and for the reasons I set out in my provisional decision, I remain of the view that URV didn't treat Mr B unfairly or unreasonably in settling the claim in the way that it did.

My final decision

My final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 July 2021.

Louise Povey
Ombudsman