

The complaint

Mr B is unhappy that Union Reiseversicherung AG (URV) declined a claim made on his travel insurance policy.

What happened

In 2020, Mr B took out an annual 'platinum' multi-trip travel insurance policy, underwritten by URV ('the policy'). The policy covered the period 16 February 2020 to 14 February 2021.

In September 2019, a holiday was booked abroad for Mr B, his wife and daughter. They were due to depart the UK on 29 February 2020. Their return flight had been booked for 25 March 2020, arriving in the UK the following day.

Whilst abroad in a country I'll refer to as 'N' in March 2020, Mr B was unable to take his pre-booked flight to another country, I'll refer to as 'A'. That's because A had introduced travel restrictions meaning that anyone arriving there would need to quarantine for 14 days. And had Mr B travelled to A and quarantined, he would've missed his intended return flight to the UK.

Mr B bought a new flight with a different airline, hoping he could transit via an airport in A before continuing his journey back to the UK. That flight had been booked for 25 March 2020. But that flight was subsequently cancelled due to travel restrictions introduced by the government of N.

Mr B then bought a ticket for a flight departing N at the end of March 2020 - with the intention of travelling back to the UK via another country I'll refer to as 'C' from a different city in N. As a result, he needed to take an internal flight on 23 March 2020. However, the flight to C was subsequently cancelled because of travel restrictions imposed for that area of C. Further, the government of N announced restrictions on movement.

So, Mr B ended up staying in N for much longer than he intended and wasn't able to get a flight home to the UK until mid-April 2020.

Mr B subsequently made a claim on the policy for his out of pocket costs including the price of the flight he managed to book back to the UK in April 2020 and other flights, which he was unable to recover from third parties together with accommodation costs, taxi fares and refreshments.

URV declined the claim. It said that the circumstances which led to the claim weren't covered under the section of the policy terms and conditions entitled: 'if you have to cut your trip short' (the curtailment section of the policy). And nor did the circumstances amount to a 'major incident' under the section of the policy terms and conditions entitled: 'if a major incident occurs while you were away' (the trip disruption section of the policy).

Unhappy, a complaint was made to URV. URV maintained its position. So, Mr B brought a complaint to our service.

Our investigator found that URV had fairly concluded that the claim wasn't covered under the curtailment section of the policy. However, he didn't think URV had fairly declined a claim under the trip disruption section of the policy. In his view the Covid-19 pandemic was a major incident as defined by the trip disruption section of the policy, as it amounted to an act of nature.

Our investigator recommended URV reconsider the claim under the trip disruption section of the policy considering the remaining policy terms and conditions. He also recommended URV add simple interest at the rate of 8% per annum if the claim was paid (from the date of the claim to the date of settlement).

URV disagreed. In summary it said:

- It's unreasonable to interpret an act of nature to include Covid-19.
- An act of nature is an event where the effects of which could not be prevented or avoided by the exercise of due care or foresight. And Covid-19 is an event that can be prevented, or measures can be taken to exercise care.
- An act of nature is widely known and defined as events that are climate related.

So, Mr B's complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision on 1 June 2022 explaining in more detail why I was also intending to uphold Mr B's complaint. I invited both parties to provide any further comments or information. URV said it had nothing further to add. Mr B accepted my provisional 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.

URV has an obligation to handle insurance claims fairly and promptly. And it mustn't unreasonably decline an insurance claim.

Curtailment claim

Page 19 of the policy terms and conditions set out the section on curtailment. It says it will pay up to £7,500 for stipulated costs if:

You had to cut short your trip because something happened after the date you left home, which you could not have expected to foresee or avoid.

But Mr B ended up returning to the UK almost four weeks after he'd originally intended to. So, I'm not persuaded that the trip was cut short.

Further, a national lockdown wasn't put into place in N until 11.59pm on 25 March 2020. As that's after the time which Mr B was originally due to depart N, I don't think it's fair and reasonable to conclude that his trip was effectively curtailed.

As such, I don't think URV has unfairly and unreasonably declined cover under the curtailment section of the policy.

Trip disruption claim

The policy also provides cover if Mr B's trip was disrupted due to a major incident.

Page 32 of the policy terms and conditions sets out the section on travel disruption. It says:

If your trip was disrupted due to a major incident. This is what we will do:

- *We will pay you up to £1,000 for reasonable additional travel expenses to enable you to return home, or move to a safer area.*
- *We will pay you up to £100 for each 24-hour period for up to a maximum of £700 for additional accommodation.*
- *We will pay you up to £30 for each 24-hour period for food up to a maximum of £210.*
- *We will pay you up to £150 for the emergency replenishment of baby essentials or prescription medication, if your existing supplies run out during the period that you are delayed.*

Trip in this section is defined as: “travel that was booked or taken during the period of insurance”.

Mr B bought the policy in February 2020. The trip was booked before this, in September 2019, and began on 29 February 2020. So, I’m satisfied that the trip was booked and taken during the period of insurance.

I’m also satisfied that Mr B’s trip was disrupted due to the Covid-19 pandemic. So, I’ve considered whether the Covid-19 pandemic can fairly and reasonably be said to amount to a major incident.

Under the trip disruption section of the policy, ‘major incident’ is defined as:

war, invasion, acts of foreign enemy, hostilities or warlike operation (whether war be declared or not), civil war, mutiny, military rising, insurrection, rebellion, revolution, military or usurped power, climatic conditions, volcanic eruption and other acts of nature which first arise during your trip.

But the phrase “other acts of nature” isn’t defined under the policy.

In the absence of the phrase being separately defined by the policy, I don’t think URV has fairly and reasonably concluded that this phrase doesn’t include a virus pandemic. I’ll explain why.

The dictionary definition

I’ve first taken into account the definition of ‘nature’ in the Cambridge English Dictionary. Although not definitive, I think it’s relevant that ‘nature’ is defined as “all the animals, plants, rocks, etc. in the world and all the features, forces, and processes that happen or exist independently of people, such as the weather, the sea, mountains, the production of young animals or plants, and growth”.

So, the dictionary definition doesn’t expressly include a microscopic virus. However, I think the definition – taken as a whole – is wide enough to include it. After all, a virus is organic material that invades living cells and uses its chemical machinery to exist and to replicate itself. As such, a virus could be viewed as part of the natural world. And given that the policy doesn’t define ‘nature’ or ‘other acts of nature’, I don’t think the policy contradicts the dictionary definition of ‘nature’.

The legal position

Investors Compensation Scheme Limited v West Bromwich Building Society and Others is relevant caselaw which sets out several principles for the construction of contracts ('the principles'). They include:

- Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
- That background knowledge is subject to the requirement that it should have been reasonably available to the parties and that it is not part of previous negotiations between the parties. It includes anything which would have affected the way in which the language of the document would have been understood by a reasonable person.
- The meaning which a document (or any other utterance) would convey to a reasonable person is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean.
- The "rule" that words should be given their "natural and ordinary meaning" reflects the commonsense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had.

The policy in this case was taken out in February 2020. Applying the principles to the policy, it's possible that the parties did have the global spread of a microscopic virus in mind when entering into the contract of insurance. Covid-19 had started spreading amongst the human population at the time of entering into the contract.

I'm also mindful that a reasonable person with all knowledge of the background at the time of entering the insurance contract could reasonably conclude that 'other acts of nature' would include all aspects of the natural world – including viruses. And different types of coronaviruses have emerged over the years and have affected certain countries along with other viruses such as the Zika virus and Ebola. I think this is something the parties would've been aware of at the time of entering into the contract of insurance.

Although, not legal authority arising out of the courts of England and Wales, the US District Court in the Southern District of New York in JN Contemporary Art LLC v Phillips Auctioneers LCC (No. 20-CV-4370) held that "[i]t cannot seriously be disputed that the Covid-19 pandemic is a natural disaster" for the purposes of a force majeure clause in an auction agreement which expressly referred to "natural disasters". I don't think that's inconsistent with the spread of a microscopic virus falling within the definition of an "act of nature".

I've also considered the 'rules of language' applied by the courts which say that a 'sweeping up' phrase will be of the same type as the previous specific provisions set out in the clause.

Applying the rules of language to the policy definition of 'major incident' could lead to the conclusion that the sweeping up phrase of "any other acts of nature" at the end of the definition includes only acts of nature along the lines of volcanic eruption and climactic conditions, not microscopic viruses (such as Covid-19). However, the curtailment section of

the policy, separately defines natural disaster. And when defining 'major disruption' in the trip disruption section of the policy, URV could've included the term 'other natural disasters' but didn't. The phrase 'other acts of nature' was used. If it had instead referred to natural disasters when defining 'major disruption', then this may have been clearer for the policyholder to understand. So, in this case, I'm not persuaded that it would be fair and reasonable to equate 'other acts of nature' with the term 'natural disaster' – as defined by the policy.

Having considered the policy definition of 'major incident', the dictionary definition of 'nature' and legal principles set out above, at the very least, I think the phrase "other acts of nature" has more than one meaning (in the absence of being separately defined elsewhere in the policy). And because I'm satisfied that the policy terms and conditions amount to a consumer contract, I think The Consumer Rights Act 2015 (the CRA) is a relevant consideration here. Section 69(1) of the CRA says: *"If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail."*

The meaning most favourable to Mr B would be that the phrase "other acts of nature" includes microscopic viruses such as Covid-19.

Other relevant considerations

When deciding whether URV has acted fairly and reasonably by declining Mr B's complaint, I've not only considered relevant law. Rule 3.6.4R of the Dispute Resolution Rules set out in the Financial Conduct Authority's Handbook says, when considering what's fair and reasonable in all the circumstances of the case, I should take into account the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The Financial Conduct Authority (FCA) Handbook sets out a number of Principles for Businesses, which URV must follow, including that a firm must:

- conduct its business with due skill, care and diligence (Principle 2).
- pay due regard to the interests of its customers and treat them fairly (Principle 6).
- pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading (Principle 7).

The Regulatory Guide, published by the FCA, entitled: 'The Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD) includes the Regulator's guidance on what the combination of Principles and the detailed rules require providers of financial services in certain circumstances to do to ensure that customers are treated fairly. And this Guide explains that firms should take account of what information the customer needs to understand the product or service, its purpose and the risks, and communicate information in a way that is clear, fair and not misleading.

I also think it's good industry practice for underwriters of travel insurance policies to clearly set out the terms on which someone is insured, including what they are and aren't covered for. And they ought to provide clear definitions of any words or phrases which could be ambiguous and have various different meanings. I've explained above why I consider the phrase 'other acts of nature' to be ambiguous and, without the phrase being separately defined, that it has different interpretations.

Overall, I'm satisfied that this all leads to the conclusion that URV hasn't acted fairly and reasonably by declining Mr B's claim under the trip disruption section of the policy in this case. I'm satisfied it's fair and reasonable for the phrase 'other acts of nature' to include the

Covid-19 pandemic.

When determining this issue, I've taken into account what URV has said about an act of nature being an event where the effects of which could not be prevented or avoided by the exercise of due care or foresight. But I'm not persuaded by that. The other examples given of what constitutes a major disruption under the policy are potentially capable of being avoided.

As the phrase being hasn't been separately defined, I don't think a reasonable person considering 'other acts of nature' would reasonably conclude that the policy only covers a major disruption which couldn't have been avoided or prevented in some way. And I've not been referred to any independent evidence – medical or otherwise – which supports the idea that once transmission starts, a virus can be prevented from spreading across the world.

The policy exclusions

The trip disruption section of the policy also goes on to list what isn't covered and that includes if:

you booked your trip, or travelled after the announcement of a major incident.

I'll refer to this as 'the exclusion'.

Under the policy, 'travelled' isn't separately defined but I'm satisfied that it would be fair and reasonable to interpret this as the date of travel from the UK. The travel disruption section of the policy expressly provides cover for "up to £1,000 for reasonable additional travel expenses to enable you to return home or move to a safer area".

So, if 'travelled' in the context of the exclusion is interpreted more widely to include all travel – including travel back to the UK after the announcement of a major incident - then a policyholder is unlikely to ever be able to claim on the policy for a return flight home after a major incident is announced. Even though there is separate cover for such a scenario under the policy.

I'm also satisfied that the announcement of Covid-19 being a major incident first took place on 11 March 2020. Although, there were reports of people contracting Covid-19 before Mr B travelled on 29 February 2020, the World Health Organisation (WHO) didn't declare Covid-19 as a pandemic until 11 March 2020.

So, I don't think the exclusion is applicable to the circumstances of this complaint, as Mr B didn't book the trip or travel on or after the WHO announcement on 11 March 2020.

Putting things right

I direct URV to assess the claim on the basis that a 'major incident' includes the Covid-19 pandemic and is covered under the trip disruption section of the policy.

The claim subject to the remaining terms and conditions of the policy – including (but not limited to) the financial limits of this section of the policy, and any applicable excess.

My final decision

I uphold Mr B's complaint. I direct Union Reiseversicherung AG to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2022.

David Curtis-Johnson
Ombudsman