

The complaint

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

What happened

Towards the end of 2019 Mr B booked a holiday abroad to a country I'll refer to as 'A'. His flight was due to depart the UK on 1 March 2020 and his return flight was booked for the end of March 2020. Also, on 1 March 2020, Mr B took out a single trip 'last minute' travel insurance policy, underwritten by URV ('the policy'). The policy covered the dates of his trip to A.

On 23 March 2020, whilst in A, Mr B's return flight to the UK was cancelled by the airline. He managed to arrange another indirect flight back to the UK on 27 March 2020, but that flight was also subsequently cancelled due to the impact of the Covid-19 pandemic. He eventually booked a return flight on 5 April 2020 and returned to the UK the next day.

During his extended trip, Mr B stayed with a family member who lived in A and he says he paid them some money to cover his prolonged stay. Mr B managed to get a refund for the return flight to the UK he'd originally booked, and also the other flight booked for 27 March 2020 but also cancelled. Mr B made a claim on the policy for the cost of his return flight to the UK (less the amount he was able to recover from the airline for the original return flight he'd booked) and daily diems.

URV declined the claim. It said the circumstances which led to the claim weren't covered 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). That's because it said that the circumstances didn't amount to a 'major incident'.

Unhappy, Mr B complained to URV. URV maintained its position, so he referred a complaint to our service. Our investigator didn't think URV had fairly declined a claim under the trip disruption section of the policy. In his view the Covid-19 pandemic amounted to a major incident. Our investigator recommended URV pay Mr B's out of pocket expenses for the return flight to the UK and a certain amount of money to cover his daily expenses, paid to the family member he stayed with. He said URV could deduct the £100 policy excess from the amount paid.

URV disagreed. In summary URV said it's unreasonable to interpret an act of nature to include Covid-19. And even if Covid-19 could be said to be an act of nature, it didn't first arise during Mr B's trip.

This complaint was passed to me to consider everything afresh and decide. I issued my provisional decision in June 2022 explaining in more detail why I was also intending to uphold Mr B's complaint. And why I was intending to direct URV to reassess his claim on the basis that a 'major incident' includes the Covid-19 pandemic and is covered under the trip disruption section of the policy.

An extract of my provisional decision is set out below:

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

The policy provides cover if Mr B's trip was disrupted due to a major incident. Pages 16 and 17 of the policy terms and conditions set out the section 'if a major incident happens when you are away'. 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.*
- £100 for each 24-hour period for up to a maximum of £700 for additional accommodation.*
- £30 for each 24-hour period for food up to a maximum of £210.*
- £150 for the emergency replenishment of baby essentials or prescription medication, if your existing supplies run out during the period that you are delayed.*

Deductible amount is £100 per person, per incident

Trip in this section is defined as: "travel during the period of insurance".

Mr B bought the policy on 1 March 2020. The trip was booked at the end of 2019 and began on 1 March 2020. So, I'm satisfied that travel took place during the period of insurance. From what I've seen, I'm also satisfied that Mr B's trip was disrupted due to the Covid-19 pandemic and that's what ultimately led to his pre-booked return flight to the UK being cancelled by the airline. So, the crux of the issue for me to determine is 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. And in the absence of the phrase being defined by the policy, I've carefully considered whether URV has fairly and reasonably concluded that this phrase doesn't include a virus pandemic. For the reasons I've set out below, I don't think it has.

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 was taken out on 1 March 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. After all, Covid-19 had started spreading amongst the human population at the time of entering into the contract.

I also think 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 encompass 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'm persuaded 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 taken into account 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 all of the above, and in the absence of being separately defined elsewhere in the policy, I think the phrase “other acts of nature” has more than one meaning. I’m also satisfied that the policy terms and conditions amount to a consumer contract. So, 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 it's fair to conclude that URV hasn't acted fairly and reasonably by declining Mr B's claim under the travel disruption section of the policy in the circumstances of this case. I'm satisfied it's fair and reasonable for the phrase 'other acts of nature' to include the Covid-19 pandemic.

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 1 March 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 booked his trip - and his outbound flight departed the UK - before the WHO announcement on 11 March 2020.

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Responses to my provisional decision

Mr B replied saying he was happy with my provisional decision, but he restated his losses and what he'd like URV to do to put things right. URV had nothing further to add.

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.

As Mr B was happy with my provisional decision and URV had nothing further to add, I see no reason to depart from my provisional findings set out above.

I therefore uphold Mr B's complaint for the reasons fully set out in my provisional decision.

Putting things right

Mr B would like URV to pay his claim outright under the trip disruption part of the policy. However, I direct URV to assess Mr B's claim on the basis that a 'major incident' includes the Covid-19 pandemic and is covered under the trip disruption section of the policy. That's

because the claim is 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 29 July 2022.

David Curtis-Johnson
Ombudsman