

The complaint

Mr and Mrs E complain about the way Union Reiseversicherung AG ("URV") has handled their travel insurance claim.

What happened

In 2019, Mr and Mrs E booked a multi destination trip abroad, departing the UK on 2 March 2020 and returning on 8 April 2020. They were also travelling with their child. This trip also included the hire of a motorhome for nine days, from 24 March 2020 with the intention of using this to travel across one of the countries visited. In January 2020, they purchased a single trip travel insurance policy, insured through URV, to cover this trip.

Mr and Mrs E departed the UK as planned. On 11 March 2020, the World Health Organisation (WHO) declared Covid-19 as a pandemic. On 17 March 2020, the UK's Foreign, Commonwealth & Development Office ('FCDO' – formerly the Foreign & Commonwealth Office ('FCO')) advised against all but essential travel abroad due to the Covid-19 pandemic. And then subsequently on 23 March 2020, the FCDO instructed all UK citizens travelling abroad to return home.

As a result, Mr and Mrs E's return flights home were cancelled by the provider. In order to follow FCDO advice, they rebooked to return on 27 March 2020, but this flight was also cancelled. Mr and Mrs E had to purchase new flights, with a different airline, but this flight wasn't until 11 April 2020. The government of the country they were visiting also put in place measures to try to prevent the spread of Covid-19 and this included a ban on interstate travel, meaning that Mr and Mrs E were unable to make use of the motorhome booking they had made. Instead they had to rent accommodation until the date of their return travel.

Upon their return to the UK, Mr and Mrs E made a claim for the additional costs they incurred. URV initially stated that there was no cover under the policy for trip disruption but then agreed to consider making payment of the travel delay benefit of £300 per person as a gesture of goodwill. In July 2020, URV issued its final response to Mr and Mrs E stating that as they stayed abroad for longer than initially planned, there was no cover under the cutting short the trip section. And that whilst there was cover for additional expenses incurred abroad due to a major incident, this didn't include pandemics. It therefore continued to decline the claim.

Unhappy with URV's response, Mr and Mrs E brought their complaint to this service. Our investigator looked into the matter and thought that the complaint should be upheld. She found that the definition of a major incident included 'acts of nature' and she felt that these would be things that are outside human control. She concluded that the Covid-19 pandemic was outside of human control and therefore the claim should be considered. She recommended that URV pay the claim, subject to the policy limits and excesses and also pay 8% interest on that sum. She also said URV should pay a sum of £100 compensation for the conflicting information it gave for not covering the claim.

Mr and Mrs E responded to say URV had previously made an offer of settlement in September 2020 which was for the policy limit under the major incident section – equal to

£3000 – less the £900 it had already paid for travel delay. Mr and Mrs E felt that URV had been incompetent in their handling of the claim and that they should be awarded compensation of the full cost of their lost holiday.

Our investigator asked URV about this settlement offer previously made and it confirmed that this had happened but that this was a mistake and it withdrew this offer. It reiterated that it didn't consider the pandemic as an act of nature and so there wasn't any cover. However, it did make a further offer of £300 compensation for the mistake made.

As no agreement could be reached, the complaint was passed to me to decide.

On 17 June 2022 I issued my provisional decision. In it I said the following:

"The relevant rules and industry guidelines say that insurers must handle claims fairly and promptly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in this case.

The policy provides cover if Mr and Mrs E's trip was disrupted due to a major incident. Pages 26 and 27 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 £60 per person, per incident

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

Mr and Mrs E bought the policy in January 2020. The policy covered dates 2 March 2020 to 8 April 2020. The trip was booked towards the end of 2019 and began on 2 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 and Mrs E's trip was disrupted due to the Covid-19 pandemic and that's what ultimately led to their pre-booked return flight to the UK being cancelled by the airline. So, the crux of the issue for me to determine is whether I think 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 in January 2020. Applying the principles to the policy, I’m conscious that URV and Mr and Mrs E may not have had the global spread of a microscopic virus in mind when entering into their contract of insurance together. And so, the phrase ‘other acts of nature’ set against this background may not have been understood to include a microscopic virus.

But I’m also conscious 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 encompass all aspects of the natural world – including viruses. After all, 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 – and 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 and Mrs E 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 and Mrs E'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 and Mrs E'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 and Mrs E travelled on 2 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 and Mrs E booked this trip - and the outbound flight departed the UK - before the WHO announcement on 11 March 2020.

As pointed out by our investigator, Mr and Mrs E would always have had to pay for a return flight to the UK, regardless of whether there had been a pandemic or not. Section B5 of the policy it says it won't provide cover for "*...any costs, which you would have expected to pay during your trip*". Therefore, I don't think it would be reasonable to ask URV to pay for the full cost of the new flights as Mr and Mrs E should be able to recover the amount paid for the original unused return flights from the airline or travel provider. In the circumstances, URV can deduct the cost of the return portion of Mr and Mrs E's original flight costs from the amount claimed for any new flights.

Travel delay section (B1)

URV had previously agreed to consider the claim under section B1 of the policy, entitled 'If you are delayed'. It said this payment was a gesture of goodwill as the claim wouldn't be

covered under this section. Pages 18 and 19 of the policy terms and conditions set out the cover available under this section. It says:

If this happened:

Your departure from your international departure point was delayed by more than 12 hours after your scheduled departure time because of a disruption to your transport providers' service.

This is what we will do:

We will pay you

- £30 for each full 12 - hour period that you are delayed up to a maximum of £300

The policy goes on to define what it means by 'international departure point' which it describes as "*any airport, international rail terminal or port from which you leave a country having passed through passport control*".

In order to make a claim under this section, the policyholder's departure needs to be delayed from their international departure point and that requires the policyholder to have passed through passport control. In Mr and Mrs E's particular case, their return flights were cancelled by the airline quite some time prior to the departure date and therefore they were not at the airport, or through passport control, when this happened. This isn't a situation which the travel delay sections of travel insurance policies are generally intended to cover and, based on the terms of the policy, I'm not of the opinion that there is a valid claim under this section.

So, I think URV is fairly entitled to deduct the benefit paid under the travel delay section from the overall settlement.

Claims handling

Over a period of several months in 2020, URV provided Mr and Mrs E with several different outcomes to their case. It was initially declined in full, followed by a payment for the travel delay benefit. It then stated there was no cover for the additional expenses incurred but in September 2020, URV made an offer to Mr and Mrs E to cover the claim under this section, up to the maximum of £1000 per person, with a deduction of £900 for the amount paid for the travel delay. It wasn't until early 2022 that URV explained this was a mistake and withdrew its offer.

I'm in no doubt that this constant change in stance by URV has caused Mr and Mrs E great frustration. And the delay in withdrawing a previously made offer has simply added to that. Mr and Mrs E have asked for the full refund of the unused holiday as recompense for the poor service provided to them by URV. And whilst I fully understand that this has caused them great upset, I do need to take into account that this was an unprecedented situation and Covid-19 was having a significant impact on the travel insurance industry. So, I don't think it is unreasonable that this would have had some impact on the normal levels of service provided.

Our investigator offered a sum of £100 as compensation to take into account the distress the conflicting information would have had on them. However, this was before she became aware of the offer made to Mr and Mrs E in September 2020, which was subsequently withdrawn. Based on what I've seen, I'm not persuaded that this sum adequately compensates Mr and Mrs E for the overall poor service they have received. URV has agreed

to make a compensation payment of £300 and I think this is a fair and reasonable award in the circumstances.

I'm aware that URV has already made an offer of £150 for delays relating to a separate claims issue – this £300 compensation award is separate to, and doesn't include, that payment."

URV didn't respond to the provisional decision. Mr and Mrs E did reply. They explained that they were unhappy with the level of compensation that was being offered and they didn't feel that the description of how they felt about the behaviour of the insurer as 'incompetent' went far enough in what they say was an unfair and unreasonable rejection of their claim. They made several points in respect of that, which I've summarised below:

- They don't believe that the situation regarding Covid-19 impacted the insurers decision and capacity to act as URV was able to make decisions quickly and easily.
- The offer to make payment under the travel delay section shouldn't be considered as a goodwill gesture. This wasn't how it was described when the offer was initially made but the payment was called that by the complaints department in support of their decision.
- The ombudsman hasn't given enough weight to the way the claim was treated and how difficult the insurer has made it for them to be compensated properly.
- Mr and Mrs E have referred to an outstanding medical bill which was part of this claim and still hasn't been resolved. The ombudsman has commented that this is a separate claim but Mr and Mrs E say this is for the same claim. They feel it is another example of where the insurer is being unfair in its treatment of them.
- They are surprised that our service doesn't require consumers to provide supporting documents for their complaint but relies on the insurer to provide the information. They say the insurer should have told us about the offer it made earlier even if this was a mistake.

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 would like to thank Mr and Mrs E for their full and considered response to my provisional decision. I've only provided a summary of their comments above and although I may not have mentioned everything that they have detailed, I would like to reassure them that I have carefully considered everything they have said when reaching my final decision.

I've noted Mr and Mrs E's comments that the decisions made by the insurer were quite swift at times and so I can understand why they don't think that the pandemic should be considered as having an impact on how their claim was handled. However, as I mentioned, this was an unprecedented situation and so I think it would have affected the claims handling process in many different ways, not just in relation to delayed responses. I have taken that into consideration when reaching my decision.

Mr and Mrs E have said that the travel delay payment wasn't made to them as a goodwill gesture initially but was called this by the complaints department later. As I explained in my provisional decision, the travel delay section doesn't provide cover for the situation Mr and Mrs E found themselves in and therefore URV didn't have to make any payment under this section. The fact that this may not have been explained as a goodwill gesture until later doesn't alter my opinion that their claim isn't covered under this section. So, if URV wishes to deduct it from the overall settlement, it can do so if it chooses.

As has been pointed out by Mr and Mrs E, there is another part of the claim which relates to a medical bill which they say has yet to be paid. I'm aware that this all stems from the same trip and claim, but this did not form part of the original complaint that was brought to this service. Therefore, it isn't something that has been investigated or that I have made a finding on. My comment in the decision related purely to the point that the compensation that was paid already should not be included in the £300 I was now asking URV to pay. I would ask however, that URV move forward with urgency to resolve this remaining part of their claim.

I'm aware of Mr and Mrs E's comments about not being required to provide supporting documentation to evidence their complaint. If a consumer wishes to provide information in support of their complaint they are welcome to do so. However, quite often all of the information is available from the financial business' file. I appreciate that this has not been the case in this instance and that has caused more upset for Mr and Mrs E – this is something I have taken into consideration when reaching my outcome.

Mr and Mrs E still feel that, as a result of the actions of URV, they should receive a higher compensation, in the form of the full refund of the unused holiday. I've taken on board all of their comments about this situation and considered the impact this has had on them very carefully when reaching my decision. And while I understand their reasoning for this request, I'm not persuaded that such an award would be reasonable in these circumstances. I'm satisfied that the compensation of £300 for the poor service received is fair.

Putting things right

URV need to do the following:

- assess and pay 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 is subject to the financial limits of this section of the policy. (The cost of the return portion of the originally purchased flights can be removed from the assessment and the payment made under the travel delay section can be deducted from the settlement amount if URV chooses to do so.)
- Add 8% simple interest to the settlement amount, from the date the claim was made to the date of settlement.
- Pay Mr and Mrs E £300 compensation already offered.

My final decision

For the reasons mentioned above, I'm upholding this complaint.

Union Reiseversicherung AG must put things right as detailed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 26 August 2022.

Jenny Giles
Ombudsman