DRN-4138928

The complaint

Mr C is a sole trader. He has complained that Ageas Insurance Limited hasn't paid enough to settle his loss of income insurance claim.

Ageas is the insurer of this policy. Part of this complaint concerns the actions of its agent. As Ageas has accepted it is accountable for the actions of its agent, any reference to Ageas includes the actions of its agent.

What happened

Mr C had insurance with Ageas for his holiday home which he lets. The policy ran from 30 July 2019 until 29 July 2020. Mr C claimed on his policy in early 2020, after his business was impacted by Covid-19 and the Government's response to the pandemic.

Ageas initially declined Mr C's claim but then offered him cover for a week's closure. Mr C complained to our service about this. Our Investigator looked into Mr C's complaint and recommended that Ageas pay Mr C's claim for the first lockdown under the clause which provides cover for losses as a result of a notifiable disease at the home. This was because the Investigator thought that Mr C had demonstrated that it was most likely that there had been a case of Covid-19 at Mr C's holiday home prior to the requirement for it to close. Our Investigator thought that the case of Covid-19 which occurred at Mr C's holiday home was one of the cases which contributed to the Government's decision to place restrictions on Mr C's holiday home from March 2020 and recommended Ageas pay for his loss of income which commenced in March 2020.

Ageas accepted the Investigator's recommendation and agreed to pay Mr C's claim. It paid him for losses between 20 March 2020 and 29 July 2020, plus interest at 8% simple per annum. Ageas said that the claim was only payable up to the point the policy ended and that a claim for further losses would need to be made separately under the new policy which incepted on 30 July 2020.

Mr C said that the period of loss he is claiming for is from 20 March 2020 until 21 June 2021, as he was unable to open during this time. He said that the policy had renewed on the same terms and thought Ageas were acting against the outcome of the Supreme Court judgment in the Financial Conduct Authority's (FCA) Business Interruption Insurance 'test case' by not paying the entire claim period he thought was due. Mr C asked our service to consider this complaint.

Mr C told us that he'd been impacted considerably by the pandemic and by Ageas not paying his claim. For example, he'd needed to take out a loan, borrow money from a family member, use credit cards and withdraw money from his pension. Mr C thought Ageas's reluctance to pay his claim had also negatively impacted his credit rating.

Ageas raised a second claim and asked Mr C for evidence to demonstrate that there had been a new occurrence of Covid-19 at his holiday home. Ageas said to our service that it appeared that Mr C had been able to reopen his holiday home from 4 July 2020 and, while it had paid his claim until the end of the policy period, any further claims would need to be as a

result of a new case of Covid-19 at the holiday home.

Mr C said that it had been established that a case of Covid-19 had occurred in his holiday home at the beginning of the cover but, in any event, the wording of the policy didn't require Covid-19 to have occurred in the home in order to provide cover. Mr C also said that Ageas had breached GDPR regulations by requesting confidential client information before it would issue a claim.

Mr C said that, when he was able to reopen his holiday home, the groups that visited were severely reduced due to the restrictions in place. Mr C provided information from the Government which said that from 4 July families could stay away from home overnight but only with up to one other family.

Our Investigator looked into Mr C's complaint and recommended that it be upheld in part. He thought that a court would most likely find that the clause within the policy did require the case of Covid-19 to be within the holiday home. He thought that Mr C's losses had been caused by the Government restrictions and he didn't think that the case of Covid-19 which occurred at Mr C's holiday home was a continuing cause of the ongoing restrictions as Mr C's business was able to reopen from 4 July. Our Investigator didn't think the restrictions on households mixing were a restriction on Mr C's premises in the context of his policy wording. He thought it was reasonable for Ageas to say that Mr C needed to demonstrate that a new case of Covid-19 had occurred at his premises in order to trigger a second claim. He did, however, think that Mr C had experienced inconvenience due to Ageas's handling of his claim. He recommended Ageas pay Mr C £500 to compensate him for this.

Ageas did not indicate whether it accepted the recommendation but Mr C did not agree with our Investigator's recommendation and asked for an Ombudsman's decision. He provided a detailed response which in summary said:

- Ageas initially refused to acknowledge the claim and requested personal correspondence between Mr C and his broker which breaches GDPR.

- He considers his claim to be one claim for the period 20 March 2020 to 21 June 2021.

- If Ageas considers that its interpretation of the policy wording is incorrect, then Mr C questions why it paid the claim until 29 July 2020.

- He is unhappy with the amount he has received in payment for the claim.

- Ageas is relying on an ambiguous exclusion to avoid paying anything further. If it was correct that the policy required the disease to have occurred 'at the home' then the payment would have been limited to three days. Any ambiguity should be interpreted in favour of the insured. Mr C also referred to the principle of contra proferentem.

- He considers the main legal arguments which need addressing are: 1) was there a valid legal contract/insurance policy and who was the insured party; 2) was there a clause for loss of rentals and if so how should it be applied; 3) how should a period of determination be calculated; 4) what is the quantum.

- Mr C questioned why Ageas renewed the policy using the same wording in the clause.

- Ageas had indicated to our service that it would pay the remainder of Mr C's claim on the same basis as the first.

- Our Investigator's assessment was biased and in favour of Ageas. In order to reach his conclusion on how the clause should be read, our Investigator had needed to redraft the clause.

- Mr C's broker asked an unrelated person how they would read the clause and they interpreted it in the same way as Mr C – i.e. that the disease does not need to occur at the home.

- A notifiable disease is a pandemic and as such cannot be limited to the home.

- Mr C would like the Ombudsman to consider all of the matters raised and award according to DISP 3.7 and DISP 3.7.2R, plus costs. £500 is not sufficient to compensate for the distress and inconvenience Mr C has been caused.

I issued a provisional decision on this complaint on 6 April 2023. In that I said:

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

Mr C has made a number of detailed points. While I'd like to reassure him that I have considered them all, I am going to focus on what I consider to be the central issues. This reflects the informal nature of our service and my role.

The claim period

This type of insurance offers protection from risks common to a business, but different policies can provide different types of cover. What is and isn't covered is set out in the policy terms and conditions. I've therefore looked carefully at this particular policy to see if Ageas has acted fairly, reasonably and in line with the terms and conditions of the policy when refusing to pay anything further for Mr C's claim.

I do not believe it is in dispute that there was a contract/policy in place between Mr C and Ageas for the period 30 July 2019 to 29 July 2020 (policy one). The contract/policy renewed for the period 30 July 2020 to 29 July 2021 (policy two).

I have started by considering whether Ageas has acted fairly, reasonably and in line with the terms and conditions of the policy with how it has considered Mr C's claim.

Section 1 of Mr C's policy has a heading which says, "We will also pay for". The relevant part of this clause says:

> "Loss of hiring charges as a result of any occurrence of murder or suicide or notifiable disease or illness arising from or traceable to foreign or injurious matter in food or drink at the Home."

Following involvement from our service Ageas agreed to pay Mr C under this clause for losses incurred until 29 July 2020. I think this was fair and reasonable and will explain why.

I am aware that Mr C considers this clause to be ambiguous but a clause is not ambiguous just because it can be read in more than one way. The starting point to interpreting a contract is to consider what a reasonable policyholder with all of the background knowledge that would reasonably have been available to the parties when they entered into the contract would have understood the language in the contract to mean. This is tested at the time the parties enter into the contract rather than with the knowledge of hindsight.

Having considered this clause, I think it is most likely that a court would find that the notifiable disease or illness needed to occur in the home to provide cover. I think that is the natural reading of the clause and the one which makes most commercial and linguistic sense. I don't think a logical reading of the clause would require that only an illness arose from food or drink at the home when all of the other parts of the clause could occur anywhere. It would also result in an unreasonably broad reading of the clause for a murder, suicide or disease to provide cover where they occur within an unlimited area. While the occurrences of Covid-19 in early 2020 led to it being declared a pandemic, I do not think that any instance of a notifiable disease is automatically considered a pandemic, as a pandemic occurs when the occurrence of the disease is widespread. I think that it is reasonable to consider that Mr C's ability to let his holiday home could be impacted by the occurrence of a notifiable disease at his premises which isn't declared a pandemic. Therefore, I think that Ageas's interpretation of the clause is reasonable and the insured event was the case of Covid-19 occurring at his home.

That means that under this clause Ageas needed to pay Mr C for his losses that occurred as a result of Covid-19 occurring at the insured premises. I understand that Mr C believes that if this were the case then the insured period would only be a few days however, I don't agree. That is because I think that each case of Covid-19 which occurred prior to the requirement for Mr C's holiday home to close was an equal cause of the UK Government's decision to require the closure.

The requirement for businesses such as Mr C's to close was set out within the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. On 3 July 2020 the Health Protection (Coronavirus, Restrictions (No. 2) (England) Regulations 2020 were [made] and revoked the previous regulations. I believe that when the regulations were revoked in July 2020 this ended the indemnity period under Mr C's policy for this claim period. I say that because the restrictions which had been put in place as a result of the disease which occurred at his premises prior to the requirement to close in March 2020 were no longer in place.

Mr C has pointed out that even after 4 July 2020, the size of groups who could visit his holiday home were severely restricted. However, I don't think that any restriction on group size was as a result of the case that occurred at his home in March 2020 and instead was the result of later occurrences of the disease which occurred elsewhere.

In reaching a decision, amongst other things I have to consider relevant law and I think the following judgments are helpful when considering this complaint: 'Stonegate Pub Company Ltd v MS Amlin Corporate Member Ltd and others [2022] EWHC 2548 (Comm)' (Stonegate), 'Greggs PLC v Zurich Insurance PLC [2022] EWHC 2545 (Comm)' (Greggs) and 'Various Eateries Trading Ltd v Allianz Insurance PLC [2022] EWHC 2549 (Comm)' (VE). That's because one of the issues considered by the Court was whether losses sustained beyond the expiry date of the policies were caused by occurrences of Covid-19 when the policy was in force.

In Stonegate the relevant period of insurance came to an end on 30 April 2020. The court said (at paragraph 209):

> "....responses were not equally caused by the cases before the end of the Period of Insurance, but rather were predominantly caused by more recent cases, and the threat of future cases, at the time of the adoption of the measure in question."

In VE the period of insurance came to an end on 28 September 2020. At paragraph 48 the court summarised the findings from Stonegate to reject VE's argument that losses throughout the maximum indemnity period had been caused concurrently and equally by all

of the cases of Covid-19 which had occurred within the relevant radius. The court said:

> "(1) the decisions in the FCA Test Case do not establish that all cases of Covid-19, whenever occurring, were equal concurrent causes of the governmental actions and public response at any given time; (2) the fact that the cases of the disease occurred in Period of Insurance may have caused the later cases of the disease (because 'cases make cases') is not sufficient to say that the cases of the disease in the Period of Insurance were the proximate cause of governmental measures and public response after the Period of Insurance; and (3) the 'death blow' or 'grip of the peril' principle is inapplicable."

In Greggs, the Court said at paragraph 39:

> "…it appears highly doubtful that, on any view, there can be said to have been only one period of interruption or interference. It seems certain that the degree of interruption or interference with Greggs' business changed over time between the first cases of Covid-19 and the end of the Indemnity Period…"

I believe that these judgments support my view that the case of Covid-19 which occurred at Mr C's home in March 2020 and was a concurrent cause of the restrictions which meant he was unable to let his holiday home, was not the cause of any further restrictions after the holiday home was allowed to reopen.

Therefore, I think that the case of Covid-19 which occurred at Mr C's home in March 2020 led to his losses between 20 March 2020 and 4 July 2020. I am aware that Ageas paid beyond 4 July, until the end of Mr C's policy period, but I don't think it would be fair or reasonable for me to require Ageas to pay Mr C's claim beyond 29 July 2020 just because it paid more than it needed to by paying for losses beyond 4 July 2020.

As I believe that the insured event of Covid-19 occurring at Mr C's home ended while policy one was in force I think it was reasonable for Ageas to say that any further claim for losses beyond 30 July 2020 would need to be raised as a separate claim under policy two. In order to be successful in that claim, Mr C would need to demonstrate that there had been a further occurrence of Covid-19 within his home which had led to a loss. I haven't seen anything to support that there was a further occurrence of Covid-19 within Mr C's home so I don't think it was unreasonable for Ageas to decline a further claim.

Mr C has queried why Ageas renewed the policy without making any changes to the wording of the clause. It is for Ageas to decide which risks it wants to cover and I don't think its decision to renew the policy with the same wording makes a difference to the outcome of Mr C's claim.

Ageas's communication and handling of the claims

Ageas agreed to pay Mr C's claim in February 2022. In an email dated 10 March 2022, Ageas was clear that it considered the claim period was between 20 March 2020 and 29 July 2020. For the reasons set out above, I think that was reasonable. However, I think that after it accepted the claim and looked into things, Ageas indicated that a second claim would be accepted and paid, although it later decided that a second claim would not be covered as there hadn't been a new occurrence of Covid-19 at Mr C's home. While I think Ageas's decision in relation to the claim was reasonable, I think this loss of expectation would have been distressing for Mr C and I have taken this into account when considering what I believe to be a fair amount of compensation. I don't think that Ageas indicating that it would pay the second claim means that it has to pay the claim as I haven't seen anything to indicate that this has caused Mr C any financial loss that he wouldn't have had if Ageas had explained

things properly.

I also think that Ageas not accepting Mr C's first claim straightaway caused him distress and inconvenience and I'm pleased to see that Ageas agreed to pay Mr C 8% interest on the settlement to compensate him for being without money that he should have had.

I have considered Mr C's point about Ageas's request for information breaching GDPR and that this delayed the claim. It's not for me to decide whether Ageas breached GDPR but if it did, I can consider making an award for the impact of any breach. I understand that Ageas requested Mr C's claim notification to the broker. I don't find that unusual and insurers will often ask for the claim notification details. However, I'm pleased to see that Ageas took Mr C's concerns into account when settling his claim and amended its request for information. Overall, I don't think that Ageas's request for information unreasonably delayed the claim for longer than it would have been otherwise. I say that because Ageas declined the claim, albeit unreasonably and I have considered that when making an award of compensation.

Taking everything into account, I'm satisfied that £500 is a fair and reasonable amount for Ageas to pay Mr C to compensate for its errors that I have set out.

The amount Ageas paid to settle the claim

I understand that Mr C is unhappy with the amount Ageas has paid him to settle his claim. For the reasons I have set out above, I don't think that Ageas needs to pay Mr C for losses beyond 29 July 2020. If Mr C thinks that Ageas's calculation of the claim for the period 20 March to 29 July 2020 is incorrect that would need to be considered separately after being raised with Ageas.

I understand this isn't the outcome Mr C was hoping for but, having considered things very carefully, I believe that the fair and reasonable outcome to this complaint is for Ageas to pay Mr C £500 to compensate for the unnecessary distress and inconvenience it caused him."

Ageas did not provide any further comments by the required date. However, Mr C did not agree and provided a detailed response. I have considered the entire response and have summarised what I consider to be the main points below. Mr C has also raised points regarding the service we have provided. Those are being dealt with separately and in this decision I am going to focus on the merits of Mr C's complaint against Ageas.

Mr C said:

- Our service has acted in an 'Ultra Vires' manner and denied him his correct rights to a fair and honest appraisal of facts.

- The principle of contra proferentem was at the heart of the FCA Business Interruption Insurance 'test case'. Case law has drawn a distinction between exemption clauses and indemnity clauses; and as his complaint concerns an indemnity clause, the principle of contra proferentem applies. As I do not have the legal standing or experience to make the decision that I have about contra proferentem, my provisional decision is flawed.

- My provisional decision is contrived because I have said that, just because something can be read in two ways, it is not ambiguous. The definition of ambiguous is something that has more than one possible meaning and that therefore can cause confusion.

- Ageas has a responsibility to take the FCA business rule 6.1.5 into account and does not appear to have done so.

- Part 2 of the Unfair Contracts Act gives the FCA powers to act where there is an unfair contract or the actions relating to a contract are unfair.

- He initially claimed for the whole period commencing 20 March 2020. He was told that he would need to make a second claim for the period commencing 30 July 2020. Mr C disagreed with this as he considered it to be one claim. A second claim was opened and at that time Ageas indicated that it was going to pay the whole claim. However, in July 2021 Mr C was asked to provide further evidence of Covid-19 within his home. This was impossible to do given the time that had passed.

- That there could be a case of deliberate misrepresentation by Ageas to avoid paying the whole claim.

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 recognise Mr C's strength of feeling regarding his complaint, but his comments have not persuaded me to depart from the outcome I reached in my provisional decision. I will explain why.

When reaching a decision on Mr C's complaint, my role is to reach a decision based on what I consider to be fair and reasonable in all of the circumstances. When doing so, I take account of, amongst other things, relevant laws.

I understand that Mr C believes that as the wording of the clause could be read in different ways, it would be considered ambiguous. While I accept Mr C's definition of ambiguous, I do not think a court would consider the clause in question to be ambiguous. Mr C has referred to the Supreme Court judgment in the FCA test case and said that the principle of contra proferentem was at the heart of this. At paragraph 47 the court said:

> "There is no doubt or dispute about the principles of English law that apply in interpreting the policies. They were most recently authoritatively discussed by this court in Wood v Capita Insurance Services Ltd [2017] UKSC 24; [2017] AC 1173 in the judgment of Lord Hodge and are set out in the judgment of the court below at paras 62-66. The core principle is that an insurance policy, like any other contract, must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. Evidence about what the parties subjectively intended or understood the contract to mean is not relevant to the court's task."

This involves considering the contract as a whole. I have considered Mr C's complaint in line with the principles set out by the Supreme Court and, for the reasons set out in my provisional decision, I remain of the view that a court would most likely decide that the clause required the occurrence of Covid-19 to have been at Mr C's home.

I have noted Mr C's point regarding the FCA's powers regarding unfair contracts. However, it is not for me to comment on the actions of the FCA. My role is to consider the circumstances of Mr C's individual complaint and to reach a decision based on what I consider to be fair and reasonable in all of the circumstances.

Mr C said that Ageas does not appear to have taken FCA business rule 6.1.5 into account. To ensure I considered his view on this I asked Mr C to clarify which rule he was referring to, but Mr C replied to say that he didn't think it was appropriate to provide advice to our service on this point. In my view, I have made a decision based on what I consider to be fair and reasonable in all of the circumstances, which includes taking into account relevant regulators' rules, guidance and standards.

I acknowledge Mr C's points that he initially made a claim commencing 20 March 2020 and he believes that there should only be one claim, and that Ageas indicated that it would pay for the whole period if he made a second claim. I've taken that into consideration when deciding on a fair and reasonable amount of compensation for his distress and inconvenience. However, I have set out in my provisional decision why I don't think Ageas needed to treat the claim as one, as well as why it does not need to pay him for the entirety of the period he is claiming for. Mr C's comments in response to my provisional decision have not persuaded me to change my mind.

I understand that Mr C considers that there could be a deliberate misrepresentation by Ageas to avoid paying the whole claim. In this decision, I have set out what I think Ageas has done wrong, as well as where I think it acted fairly and reasonably. I have not seen evidence to persuade me that there was a deliberate misrepresentation on Ageas's behalf to avoid paying the whole claim.

I have considered that it might have been difficult for Mr C to provide evidence of an occurrence of Covid-19 at his home given the time that had passed by the time he was asked for further evidence. But I think it is reasonable for Ageas to require evidence to support that Covid-19 most likely occurred. I haven't seen anything to support that there was a further occurrence of Covid-19 within Mr C's home so I don't think it was unreasonable for Ageas to decline his further claim.

Putting things right

I remain of the view that the fair and reasonable outcome to Mr C's complaint is for Ageas to pay Mr C £500 compensation for distress and inconvenience for the reasons set out in my provisional decision.

My final decision

For the reasons set out above, and in my provisional decision, my final decision is that I uphold this complaint in part and require Ageas Insurance Limited to do as set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 June 2023.

Sarann Taylor
Ombudsman