

The complaint

F, a limited company, complains U K Insurance Limited (UKI) applied one indemnity limit to two claims it made on its commercial combined insurance policy.

What happened

F is a business which receives and disposes of animal by products (primarily for processing into pet food). In September 2020 an investigation by environmental health officers of an illegal cutting plant found animal products were being prepared there for entry into the human food chain. Criminal charges were brought against F on the basis some of the product found had been diverted from its site to the cutting plant. F claimed on its policy with UKI and I understand funding has been provided for its solicitors to defend that claim.

Separate charges were subsequently brought in relation to an allegation F had supplied animal by products to a different business (in another location) also for diversion into the human food chain. It sought assistance from its policy to defend that claim. UKI said this claim had the same originating cause as the initial one so a single indemnity limit of £150,000 would apply to both of them.

Our investigator reviewed the submissions from the parties and the policy terms. She didn't think it was right to only apply a single indemnity limit to the claims because they related to different types of products and the distribution of those products had been carried out in a different manner. She thought a separate indemnity limit should be provided for the second claim (and any costs F had incurred that would have been covered by that limit should be reimbursed to it plus interest). She also said UKI should pay F £250 in recognition of the inconvenience it had been caused by what it got wrong.

UKI didn't agree. In summary it said relevant law had established that when considering terms relating to originating cause the test was whether there was a unifying factor which connected the different occurrences. Here both cases involved the (alleged) unlawful diversion of poultry and meat which had been designated as animal by product. And the criminal charges brought against F were identical in both cases. The time period in which the offences had allegedly taken place was also nearly the same. It didn't think it was relevant that different kinds of meat product and distribution methods were involved (and in any case it thought the charges in the second case did contain allegations relating to poultry). So it thought only one limit of indemnity should apply to both claims.

F's representatives also made further submissions in support of its position that a separate limit of indemnity should apply to the second claim. Those submissions included:

- The cases had been progressed by separate prosecutors with separate counsel and separate investigations had been conducted at different locations. The cases had different co-defendants who weren't linked to each other. And the evidential base on which the cases were brought was substantially different. They didn't accept the incident dates were near identical and the courts hadn't agreed to combine them together. And there was a significant period between the different cases being heard.

- The movement of the meat product was different in the two cases and it hadn't been shown meat was present in the second case (it was based on a single text message from a driver without further evidence). It didn't think the evidence showed there had been any negligence by F in allowing products to leave its plant and it didn't accept there was a unifying factor between the two claims. It thought there were significant differences between the case law UKI had relied on and the circumstances here.

I issued a provisional decision on the complaint. In summary I said:

The relevant rules and industry guidelines say UKI has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

In its final response to the complaint F made UKI addressed an issue relating to making interim payments and why it wouldn't be doing so. That issue hasn't been raised as part of F's submissions to our service. So I haven't considered it in this decision.

I don't think it's in dispute the claims F made are covered by its policy. The issue raised in this complaint is whether a single indemnity limit should apply to both claims or whether the second claim should attract a separate indemnity limit. In relation to that the policy says "the most the Company will pay for all claims resulting from one or more events arising at the same time or from the same originating cause shall not exceed the indemnity limit stated in the Schedule". I understand the indemnity limit in the schedule is £150,000.

So the question is whether the two claims in this case do have the same originating cause. That term isn't defined in the policy but both parties have referenced case law on the matter which I agree is relevant here. In 'Countrywide Assured Group v DJ Marshall [2002]' the judge found that the use of the word 'originating' "entitles one to see if there is a unifying factor in the history of the claims with which the claimants were faced". That was also affirmed in 'Spire Healthcare Limited v Royal & Sun Alliance Insurance Plc [2022]'. The judge there also said "in searching for the unifying factor, one must not go back so far in the causal chain that one enters the realm of remote or coincidental causes which provide no meaningful explanation for what has happened".

I've thought about how that applies here. I agree there are differences between the claims that were brought against F. In the first case there appears to be evidence in the form of barcodes that would link the animal by products to ones that had been provided to F. In the second case F's representatives say no actual evidence of its product has been found at the location where it was supposed to have been taken and the case was based on a text message from a driver (which he had provided an alternative explanation for).

I also appreciate there are differences in the progression of the cases themselves including (though not limited to) them being heard in different courts and involving different co-defendants. I also understand the judges involved have declined to combine the claims together and confirmed they should be heard separately.

But having carefully considered the relevant case law I don't think the test is whether the claims themselves can be differentiated (which I accept they can) but whether they stem from the same originating cause. And I think it's relevant here that in the Spire case the judge reviewed previous cases including 'Cox v Bankside [1995]' and said that illustrated how the "negligence of one individual can be an originating cause for the purpose of an aggregation clause of this type, even though his negligence may take different or multiple forms". She gave an example of a surgeon who had incompetently treated three patients in different ways and said "the fact that the pattern of incompetence manifested itself in different ways did not alter the fact that the problem could be traced back to one incompetent/negligent surgeon who failed to treat his patients with adequate skill and care".

I accept in that case (which related to the misconduct of a surgeon and a personal injury claim against the hospital group that employed him) there was no dispute the surgeon had been at fault. He'd been convicted of serious offences and was serving a significant prison term. And the hospital group had already paid out to a compensation fund for the victims. The issue was what limit should apply to reimbursement of those sums by its insurer.

The position here is different because the legal action against F is ongoing (and that's what it's seeking cover for under the policy). F's representatives have commented on the evidential base for that legal action in their submissions and in particular believe the second claim to be extremely weak. But I don't think those claims can be said to be wholly without merit. They are being brought by public authorities which will have been required to consider whether there's a reasonable prospect of a conviction in a criminal case where guilt needs to be proven beyond reasonable doubt. And in any event I don't think the question of whether the claims are likely to be successful is key when considering whether they are linked by the same originating cause

In my view what is relevant to that is the charge against F which in both cases is that it conspired "to defraud the general public" by diverting poultry (and meat) categorised as animal by product which was unfit for human consumption into the human food chain". I think that shows there is an underlying link between the claims; both arise from an allegation of conspiracy on the part of F for which the alleged consequences are the same – an attempt to defraud the public by diverting animal by products into the human food chain. And while I accept the timeframes in which those events are supposed to have occurred aren't identical they do correlate with each other. There's no significant time separation between the alleged offences taking place.

I recognise the alleged conspiracy did manifest itself in different ways in the two claims (and those are being heard separately in different locations). But having taken into account the findings of the Spire case I don't think it was unreasonable of UKI to conclude the originating cause of both was the same. That was F's alleged conspiracy to defraud resulting in animal by product entering the human food chain.

It doesn't seem to me that could reasonably be regarded as a remote or coincidental cause which doesn't provide a meaningful explanation for what then happened; I think it was reasonable of UKI to think it did. And it follows that I think it was fair and reasonable of UKI to say only one limit of indemnity would apply to both claims F made.

Responses to my provisional decision

UKI didn't respond. F's representatives didn't agree with my provisional decision. In summary they said:

- More weight should be placed on factors which they argued meant there wasn't a unifying factor between the claims (including the different locations and prosecuting authorities). And the judges involved had declined to unify them together. They thought that was significant and should be given substantial importance.
- The role of F in relation to the two claims was also wholly different. In the first case the allegation was F had diverted the product to a third party location. But the circumstances of the second case were very different to that (and involved a lack of supervision of staff members and failure to apply safeguards).

- The Spire case didn't have had a read across here as that was based on a civil duty of care which didn't provide an equal comparison to the position in a criminal case where the factual background and standards of proof were different. Civil proceedings couldn't serve as a direct legal precedent for criminal proceedings and would only be of limited relevance there.
- Context needed to be considered and not just the generic nature of the charges. They drew attention to the complexity involved in a criminal case of this nature and what would need to be proven in relation to it. There were significant differences between the two cases, in particular in relation to the allegations that were made against F, which they thought meant they could be distinguished from each other.

So I need to reach a final 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.

I understand the points F's representatives have made about the difference in the cases brought against it. I acknowledged in my provisional decision there were important distinctions here including the specific allegations made and the different locations they took place in. I also recognised and took into account that the judges involved in the cases had declined to combine them. But it remains my view that the key question isn't whether the cases themselves can be differentiated (which I accept they can) but whether they arise from the same originating cause given that's the specific wording contained in F's policy.

I think the case law I've previously referenced is relevant when considering that. I appreciate the charges against F are criminal ones and I recognise the different burden of proof that entails in comparison to a civil case. I also note the points F's representatives have made about the applicability of a civil case to a criminal one. However, I'm looking here at whether UKI acted fairly and reasonably in concluding one limit of indemnity should apply to both claims F made. I think the comments the judge made in the Spire case (and the other case law referenced) are relevant considerations when reaching a finding on that.

And the judge in Spire found the fact incompetence (as it was in that case) manifested itself in different ways didn't mean the issue didn't result from the same originating cause. For F's claims it remains the case that the charges against it in both cases are the same. It's alleged to have conspired *"to defraud the general public" by diverting poultry (and meat) categorised as animal by product which was unfit for human consumption into the human food chain*".

I'm not persuaded it's reasonable to describe those charges as generic given they provide details of a specific offence and a specific timeframe in which it's supposed to have taken place. And I continue to feel there is an underlying and unifying link between the two cases; both result from the same alleged conspiracy on the part of F (to divert product unfit for human consumption into the human food chain). Nor is there any significant time separation between the alleged offences taking place. I recognise the alleged fraud nevertheless manifested itself in different ways (with distinctions in what F is supposed to have done). But for the reasons I've explained I think it was fair of UKI to say they both arose from the same originating cause and so only one limit of indemnity would apply to them.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman

Service, I'm required to ask F to accept or reject my decision before 5 September 2025.

James Park
Ombudsman