

The complaint

Mr and Mrs J are unhappy that Union Reiseversicherung AG (URV) declined a claim made on their travel insurance policy.

What happened

In September 2019, Mr and Mrs J took out an annual 'premier' multi-trip travel insurance policy, underwritten by URV ('the policy'). The policy covered the period 6 September 2019 to 5 September 2020.

In October 2019, Mr and Mrs J booked a holiday abroad to the USA. They were due to depart the UK on 10 March 2020 and leave the USA on 24 March 2020, returning to the UK on 25 March 2020.

Whilst abroad, on 19 March 2020, Mr and Mrs J received notification from their airline that their return flights to the UK had been cancelled. They managed to book an indirect return flight to the UK, with a different airline, departing on 23 March 2020. That flight ended up being delayed, and Mr and Mrs J returned to the UK on the date they were originally due to return; on 25 March 2020. However, the rearranged flights returned to a different UK airport to the one they departed from. So, Mr and Mrs J incurred additional costs hiring a car once back in the UK to get home and additional petrol costs.

They promptly made a claim on the policy for the cost of additional flights back to the UK, the cost of the hire car and petrol.

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, Mr and Mrs J complained to URV. It maintained its position. So, Mr and Mrs J brought a complaint to our Service.

Mr and Mrs J have confirmed that they received a refund from the airline who cancelled their original return flights and accept that this should be deducted from the amount they claimed. The total amount they seek from URV to put things right is now around £837.

Our investigator concluded that URV had fairly concluded that the claim wasn't covered under the curtailment section of the policy. However, he did think it was fair and reasonable to conclude that 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 to accept the claim under the trip disruption section of the policy subject to the remaining policy terms and any applicable limits/excess. He also recommended URV to add simple interest at the rate of 8% per annum to the claim amount, 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 equivalent to a natural disaster. Covid-19 isn't a geologic process and so isn't an act of nature. A natural disaster is a major adverse event resulting from natural processes of the Earth; examples are floods, hurricanes, tornadoes, volcanic eruptions, earthquakes, tsunamis, storms, and other geologic processes.
- The use of the word "act" indicates a specific major one-off event, rather than an ongoing long-term problem.
- 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.

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

An extract of my provisional decision is set out below:

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

Curtailment claim

Page 18 of the policy terms and conditions set out the section on curtailment. It says it will pay up to £5,000 for stipulated costs if:

"You had to cut short your trip because the following unexpectedly happened after you left home:

- *you, a travelling companion, a family member, a business associate, or the person you were staying with became ill, was injured or died;*
- *you were advised by the Police that your home, had been burgled, or suffered serious fire, storm or flood;*
- *your pre-booked accommodation was damaged by a natural disaster, and alternative accommodation is not provided;*
- *you were called for jury service or required as a witness in a court of law;*
- *you, or a travelling companion as members of HM forces had your leave orders cancelled".*

Natural disaster is defined as:

"volcanic eruption, flood, tsunami, earthquake, landslide, hurricane, tornado or wildfire".

Mr and Mrs J's return flight was cancelled on 19 March 2020, resulting in them having to rebook a return flight with another airline. They ended up returning to the UK on the same date as they originally planned to. So, I'm not persuaded that the trip was cut short and as such, I don't think URV has unfairly and unreasonably declined cover under the curtailment section of the policy.

Although the airline which cancelled the return flight didn't give a specific reason for doing

so, given the global impact of the emergence and spread of Covid-19 at the time – and what I know about the reasons for many flights being cancelled in various countries around the world at the time – I think it's fair to assume that it was due to the impact of Covid-19.

So, I'm also satisfied that the circumstances which led to Mr and Mrs J's claim doesn't fall within one of the specific, listed insured events for which cover is provided under the curtailment section of the policy.

Trip disruption claim

The policy also provides cover if Mr and Mrs J's trip was disrupted due to a major incident. Page 31 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 and Mrs J bought the policy in September 2019. They booked their trip in October 2019 which began on 10 March 2020. So, I'm satisfied that the trip was booked and taken during the period of insurance. I'm also satisfied that Mr and Mrs J's trip was disrupted due to the Covid-19 pandemic.

So, the crux of the issue for me to determine is whether the Covid-19 pandemic can 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 defined by the policy, I've carefully considered whether URV has fairly and reasonably concluded that this phrase doesn't include a virus pandemic. And I don't think it has. 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 September 2019.

Applying the principles to the policy, I'm conscious that URV and Mr and Mrs J may not have had the global spread of a microscopic virus in mind when entering into their contract of insurance together – particularly one such as Covid-19 which hadn't started spreading amongst the human population at the time of entering into the contract. And so, the phrase 'other acts of nature' set against this background may not have been understood to include a microscopic virus. On the other hand, I'm also conscious that a reasonable person with all knowledge of the background at the time of entering the 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 that referred expressly to “natural disasters”. So, that’s not 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. I’m conscious that 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). This is a point URV has sought to make; it says other acts of nature should be seen as equivalent to a natural disaster. And that a natural disaster is a major adverse event resulting from natural processes of the Earth; examples being floods, hurricanes, tornadoes, volcanic eruptions, earthquakes, tsunamis, storms, and other geologic processes. As Covid-19 isn’t a geologic process, it says Covid-19 isn’t an act of nature. However, I’m not persuaded by this point.

As set out above, 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, 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 in this case.

Further, having considered the policy definition of ‘major incident’ and the principles of interpretation, the rules of language and dictionary definition of ‘nature’ as set out above, at the very least I’m satisfied that the phrase “other acts of nature” has more than one meaning – particularly as it isn’t separately defined by the policy.

As such, and because I think that the policy terms and conditions amount to a consumer contract, I’m satisfied The Consumer Rights Act 2015 (the CRA) is also 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 J 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 J’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*
- relevant regulators’ rules, guidance and standards*
- relevant codes of practices; and*
- where appropriate, what I consider having been good industry practice at the*

relevant 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 consider it to be good industry practice for underwriters of travel insurance to clearly set out the terms on which someone is insured, including what they are and aren't covered for and 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 and meanings.

Overall, I'm satisfied that the applicable regulations, and FCA's rules, guidance and standards and what I consider to be good industry practice at the relevant time lead to the conclusion that URV hasn't acted fairly and reasonably by declining Mr and Mrs J's claim here. I don't think the way in which 'major incident' is defined in the policy – and in particular the inclusion of the phrase 'other acts of nature' – is clear in relation to what 'other acts of nature' entails.

When deciding this issue, I've taken into account what URV has said about the use of the word "act". URV has said that this word indicates a specific major one-off event, rather than an ongoing long-term problem. But I note that many of the other listed examples of what constitutes a major disruption such as war, invasion, acts of foreign enemy, hostilities or warlike operation, civil war, mutiny, military rising, insurrection, rebellion, revolution, military or usurped power can – and often are – long-standing issues. So, I don't think it would be fair and reasonable to equate the phrase 'other acts of nature' to meaning a major one-off event, given how the rest of the definition is drafted and that the other examples could last for a sustained period.

And in light of these examples, I'm also not persuaded by what URV says 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. That's because applying this logic, many of the other examples referred to, are potentially capable of being avoided but are still included in the definition of what constitutes a 'major disruption'. In the absence of the phrase being separately defined, I don't think a reasonable person considering 'other acts of nature' - given all the surrounding circumstances when the policy was taken out - would reasonably conclude that this concerns a major disruption which couldn't be avoided or prevented in some way. Further, I've not been referred to any independent evidence – medical or otherwise – that supports what URV says that once transmission starts, a virus can be prevented from spreading across the world.

So, overall, in 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 and it's not clear whether it's meant to be restricted to travel from the UK or any travel after the announcement of a major incident (which would include travel back to the UK).

Given the principles and rules of language - referred to above – I'm satisfied that when the policy was taken out, a reasonable person with all knowledge of the background at the time of entering the insurance contract would conclude that 'travelled' in the context of the exclusion relates to the date of travel from the UK. And as the word 'travelled' isn't defined by the policy and could have different meanings when applying the principles of interpretation, I'm also satisfied that section 69(1) of the CRA is relevant here. So, I think it's fair that 'travelled' should be interpreted in a way that is most advantageous to Mr and Mrs J. And that would be that it's restricted to travel from the UK – and not to conclude any travel after the announcement of the major incident.

I think this leads to a fair and reasonable conclusion given that the term isn't clear as required by the relevant regulations and FCA's rules and guidance – also referred to above. Particularly as 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 J started their trip on 10 March 2020, the World Health Organisation (WHO) didn't declare Covid-19 as a pandemic until 11 March 2020. The WHO said:

"In the past two weeks, the number of cases of COVID-19 outside China has increased 13-fold, and the number of affected countries has tripled. There are now more than 118,000 cases in 114 countries, and 4,291 people have lost their lives. Thousands more are fighting for their lives in hospitals. In the days and weeks ahead, we expect to see the number of cases, the number of deaths, and the number of affected countries climb even higher. WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic".

So, I'm satisfied that the exclusion isn't applicable to the circumstances of this complaint, as Mr and Mrs J didn't book their trip or travel on or after the announcement on 11 March 2020. They booked the trip in October 2019 and travelled abroad on 10 March 2020.

Changes to the policy with effect of 13 March 2020

Mr and Mrs J have provided our Service with a document entitled: “policy changes” issued on behalf of URV. It goes on to say:

“please see below a list of changes we have made to our policies, which may affect returning customers when buying future policies”.

And then:

*“From 13th March 2020, there is no cover under our policies for...
... any claims as a result of Coronavirus, COVID-19, Severe Acute Respiratory Syndrome (SARs-COV-2) any mutation of Coronavirus, COVID-19 or SARs-COV-2 or any pandemic or fear or threat of any the above...”*

I’ll refer to these as “the policy changes”.

URV hasn’t sought to rely on the policy changes to decline the claim.

However, if it did seek to do so, I’m minded to conclude that it wouldn’t be fair and reasonable for it do so. Firstly, the policy changes are said to affect returning customers when buying future policies. Mr and Mrs J bought the policy in September 2019 and it wasn’t due to end until September 2020, many months after 13 March 2020.

Further, Mr and Mrs J had already departed for their trip on 10 March 2020 and were abroad before the policy changes were communicated. So even though the terms and conditions allow for policy terms to be changed in particular circumstances during the period of coverage, I don’t think it would be fair and reasonable for URV to rely on the policy changes which included a term to effectively exclude all claims resulting from Covid-19 or the pandemic (except certain emergency medical expenses) in such circumstances. Particularly as Mr and Mrs J weren’t given any warning of the policy changes”.

Responses to my provisional decision

Mr and Mrs J replied saying they were happy with my provisional decision and had nothing further to add. URV replied saying it 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.

As both parties accept my provisional decision, I see no reason to depart from my provisional findings set out above.

I therefore uphold Mr and Mrs J’s complaint for the reasons set out in my provisional decision – an extract of which appears above.

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 (at page 31 of the terms and conditions of the policy) as the ‘major incident’ first took place during Mr and Mrs J’s trip.

This 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 this 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 and Mrs J to accept or reject my decision before 6 May 2022.

David Curtis-Johnson
Ombudsman