

The complaint

Mr J and Miss J are business partners. They complain about what ARAG Allgemeine Versicherungs-Aktiengesellschaft (Arag) did after they made a complaint on their farm insurance policy.

What happened

In June 2023 Mr J and Miss J sought assistance from the legal expenses section of the farm policy. They said an area of their land had been incorrectly recorded as being within their neighbour's title at the Land Registry. This had become apparent when they tried to sell the land. They wanted assistance with a claim against their neighbours who weren't co-operating in resolving the matter.

Arag didn't think the claim was one their policy covered. It said while the policy did cover property disputes it would need to arise from an event causing physical damage or following a public or private nuisance or trespass. It didn't think that was the case here. But it said if Mr J and Miss J were able to evidence the boundary position by providing a surveyor's report then cover could be provided. Solicitors for Mr J and Miss J subsequently said they did own the land and thought the claim would represent a trespass and private nuisance. Arag didn't change its position.

Our investigator thought it was fair of Arag to say the claim didn't fall within one of the insured events covered by the policy. And he felt the responses Arag provided to correspondence from Mr J and Miss J was reasonable.

Mr J and Miss J didn't agree. In summary they said:

- Following advice in a phone call from Arag they'd sought and paid for advice from their solicitors who had advised in their view the claim was covered by their policy. And they thought Arag should have taken on board that advice given it was provided from a solicitor with a property background.
- Even if their dispute wasn't covered Arag should have guided them through the process with greater clarity and engaged with the issues they were experiencing. They thought it had misunderstood the nature of their dispute despite clear information about this being given. For example Arag suggested in one email the dispute related to their neighbours not agreeing to sell the land to them.
- That poor customer service had taken place at a difficult time for them when they were concerned about the impact on their family and small business of not being able to sell their land. They thought it was something for which Arag should provide compensation.

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

I do appreciate this has been a frustrating experience for Mr J and Miss J. I understand the dispute with their neighbours has now been resolved as they agreed to sign the transfer documents in relation to the information held by the Land Registry in November last year. But I recognise that prior to that taking place Mr J and Miss J would have understandably been concerned about the impact on their business if they weren't able to deal with this matter and obtain the funds they needed for reinvestment. I've kept that in mind when considering the customer service Arag provided when dealing with their claim.

For cover to be available for that claim at all it needs to fall within one of the insured events set out in their policy. And the onus is on a policyholder to show that's the case. In this case I don't think it's in dispute the only insured incident Mr J and Miss J's claim could fall within is the 'Property' section which covers “

A dispute relating to material property which You own or is Your responsibility.

- (a)following an event which causes physical damage to Your material property*
- (b)following a public or private nuisance or trespass*
- (c) which You wish to recover or repossess from an Employee or ex-Employee”*

There's been no physical damage to material property in this case and the claim doesn't relate to an employee or ex-employee. So for cover to apply the dispute would need to follow “a public or private nuisance or trespass”. Trespass is generally understood to be the unlawful presence of a person on land in the possession of another. That wasn't the case here; Mr J and Miss J say the land in question has been occupied by them throughout.

However, in relation to nuisance (and taking into account relevant case law) I think that would exist where there had been substantial interference with the claimant's ordinary enjoyment of their land. That would commonly be caused by noise, smell, encroachment or actual physical damage. But I appreciate case law has also established that “anything short of direct trespass on the claimant's land which materially interferes with the claimant's enjoyment of rights in land is capable of being a nuisance”. Given Mr J and Miss J highlighted as part of their claim the impact of their neighbours actions on their ability to sell the land I think they have shown, on balance, a private nuisance exists here.

I appreciate Arag concerns were also focussed on whether the material property in this case was within Mr J and Miss J's ownership. For nuisance to exist at all Mr J and Miss J would need to show the dispute related to their land. I don't think the position on that was clear from the initial submissions they made. Nor do I think it was unreasonable of Arag to advise it would review the position on receipt of a legal opinion showing the claim was covered by their policy. I appreciate their solicitors did subsequently confirm that but they didn't provide any further rationale beyond simply stating that. So I don't think it was unreasonable of Arag to maintain its position on coverage having reviewed that opinion.

Where I do have some concerns is that I think it was already apparent from further information Mr J and Miss J had provided that they didn't believe this to be a dispute about the position of the boundary (and so ownership of the land). Instead they thought it was an issue over how that had been recorded by the Land Registry and their neighbour's unwillingness to correct that without conditions Mr J and Miss J felt were unreasonable.

I appreciate there isn't further evidence of what the neighbour's position was and whether they did dispute ownership of the land. But rather than saying Mr J and Miss J needed to obtain a surveyor's report to evidence their claim I think Arag could instead have asked them

for the correspondence with their neighbours and the claim letter their solicitors had issued which would likely have made the position on this clearer.

I know Mr J and Miss J are also unhappy with the tone of some emails they were sent by Arag. I've reviewed those emails and I don't have concerns about the way in which they're worded. But I do agree with Mr J and Miss J that at times Arag does appear to have misunderstood the nature of their dispute. I'm also unclear why Arag said if they were able to show ownership of the land the claim could be considered under the trespass section of the policy. As I've already explained I think the claim could be regarded as a private nuisance but I'm not clear how it could be a trespass.

I've gone on to think about the impact on Mr J and Miss J of all that and what Arag needs to do to put things right. It's not clear to me their claim should have been accepted as it hasn't been clearly established its something their policy would have covered. I'm also mindful of the fact the onus was on Mr J and Miss J to show an insured event had taken place and it was always open to them to provide additional information to Arag about the nature of their dispute if they wanted to do so.

However, I do think what Arag got wrong will have caused them some unnecessary distress and inconvenience at what was already a challenging time. I think some of that would likely have been avoided if Arag had been clearer about what it needed and had better understood the claim they were making. In recognition of that I think it would be reasonable of Arag to pay them £250.

Responses to my provisional decision

Arag didn't respond. Mr J and Miss J accepted my provisional decision though drew attention to the time they'd had to expend in explaining matters to Arag and provide further evidence to it.

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 agree with Mr J and Miss J that what Arag got wrong here will have caused them some avoidable distress and inconvenience (including spending time in correspondence with it). I recognise this was already a difficult time for them and their business. But those are issues I took into account when reaching my provisional decision. So I think the £250 I said Arag should pay to recognise the impact on them of what it got wrong remains appropriate (and I recognise Mr J and Miss J have accepted that outcome).

My final decision

I've decided to uphold this complaint. ARAG Allgemeine Versicherungs-Aktiengesellschaft will need to put things right by paying Mr J and Miss J £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Miss J to accept or reject my decision before 27 December 2024.

James Park
Ombudsman