

The complaint

Miss D's complaint is about the way in which a claim on her ARAG Legal Expenses Insurance Company Limited ('ARAG') legal expenses insurance policy was handled.

Miss D says that ARAG treated her unfairly which caused her detriment, for which she wants to be compensated.

What happened

Miss D made a claim on her ARAG legal expenses insurance policy for cover to bring a claim against a third party for personal injury.

ARAG accepted the claim and appointed a panel firm ('A') to pursue the matter as appropriate. A was appointed in July 2021 and represented Miss D until February 2024.

In January 2024 Miss D complained about the way her claim was being conducted by A and asked for her own choice of Solicitor to be instructed. ARAG made some enquiries and determined that the best course of action was to cancel A's instruction given the relationship had broken down between them and Miss D.

After discussing matters with Miss D, ARAG offered to instruct another panel firm ('B') to take on her claim in place of A. B were appointed on 8 March 2024 but after ARAG provided them with further details of the claim, B said they couldn't act for Miss D due to a conflict of interest. This was communicated by B 12 days after their instruction. Miss D was informed of this on the same date by ARAG.

ARAG then offered Miss D the freedom to choose her own legal representative, which she agreed to. Miss D instructed another firm ('C') to act for her. C asked ARAG for A's file of papers. ARAG then asked A to supply these to C.

Miss D says that A asked for an undertaking to be given in respect of their costs if C was going to pursue Miss D's claim, which C did not consider to be financially viable in the circumstances. As such C declined to act for her.

In April 2024 Miss D asked ARAG for help to find an alternative firm of Solicitors to act for her. ARAG offered to ask A if they'd be prepared to continue to act for her again but A refused on the basis that the relationship had broken down.

ARAG were mindful about the limitation approaching Miss D's claim so urged her to find a Solicitor of her own to protect her position. ARAG said they didn't have another panel firm that could assist and that they had exhausted all avenues to assist her.

Miss D says she then litigated her claim herself which she found stressful and difficult. She feels ARAG are responsible for the position she found herself in because A's actions were their responsibility and these had prejudiced her claim. She also said she wasn't able to find alternative representation. In particular Miss D feels that ARAG left her without representation and their actions meant that she couldn't secure it elsewhere because no

Solicitor was prepared to take on a case where an undertaking had to be given in relation to A's fees.

Miss D also feels ARAG are responsible for the conflict of interest B said was in place and that this further prejudiced her case. She wants ARAG to compensate her for the distress and inconvenience this all caused her as well as the potential financial loss she might suffer depending on the outcome of her claim. In addition, Miss D wants ARAG to provide her with immediate and adequate representation to pursue her claim effectively.

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.

Having done so, I don't uphold Miss D's complaint. Before I explain why, I wish to acknowledge both Miss D's strength of feeling about her complaint and the volume of submissions she's made in respect of it. Whilst I've read everything she's said, I won't be addressing it all. That's not intended to be disrespectful. Rather it's representative of the informal nature of the Financial Ombudsman Service.

I know Miss D is unhappy with the actions of A in particular and feels that ARAG are responsible for this because they are a panel firm to ARAG. Whilst the latter is true, A are in independent firm of professionals with their own regulator and codes of conduct. And as such we aren't able to comment on their actions because they don't fall within the Financial Ombudsman Service's remit. What I can however consider is ARAG's actions after Miss D complained about A's conduct.

From what I can see A were instructed between July 2021 and February 2024 by ARAG to assist Miss D. In January 2024 Miss D complained about A. She said she wanted to appoint a Solicitor of her own choosing and that A had handled her claim in an unsatisfactory way. ARAG then made enquiries with A about a number of things including the stage the claim had reached as well as what action they'd taken to resolve her complaint. A told ARAG they had reached a stalemate about the medical evidence in the claim in that Miss D did not agree with it or the advice being given and that the claim had yet to be issued. A also said the relationship had broken down and that they had set out what instructions Miss D would need to provide in order for them to act for her, but in the absence of those, they would not do so. In addition, A said Miss D was refusing to communicate with them or provide instructions.

In the circumstances ARAG took the view that the best course of action would be to offer Miss D an alternative panel firm of Solicitors to assist her. They did not however offer her the freedom to choose her own Solicitor because proceedings had yet to be issued. Miss D feels she should have been provided with her own Solicitor when she asked for this. I have been provided with a copy of Miss D's policy. It says:

"Your legal representation

- *On receiving a claim, if a legal representation is necessary, we will appoint a preferred law firm as your appointed representative to deal with your claim. They will try to settle your claim by negotiation with having to go to court.*
- *If the appointed preferred law firm cannot negotiate settlement of your claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest then you may choose a law firm to act as the appointed representative."*

It's common for legal expenses insurance policies to contain such a term and it's consistent

with the relevant laws applicable to freedom of choice. Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 says:

“where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)”

The phrase “any inquiry or proceedings” means when it becomes necessary to issue court proceedings, or proceedings in another formal place of inquiry, such as a tribunal.

At the point at which she asked for her own Solicitors to be instructed, Miss D’s claim had not been litigated. That means proceedings had not been issued. And given she didn’t at that point have a conflict of interest with A, I can’t see that she had the freedom to choose her own Solicitor. Because of this, I don’t think ARAG did anything wrong by not offering her the option to instruct her own Solicitor when she asked for it as she wasn’t entitled to this, either in accordance with the policy terms, nor as a matter of law.

When it became clear that the only other panel firm ARAG had available to it (B) had a conflict of interest, ARAG did however offer Miss B the option to choose her own Solicitor. I know Miss D is unhappy that ARAG didn’t identify this conflict any sooner but that wasn’t a matter for ARAG to address. ARAG couldn’t know that B were conflicted until they told ARAG this. And contrary to what Miss D says, ARAG doesn’t have access to B’s internal data and therefore couldn’t have known about this for two years as she says. Because of this ARAG weren’t responsible for B’s inability to act for Miss D. And given that B notified ARAG of their position fairly swiftly which ARAG immediately relayed to Miss D, I don’t think they caused her any prejudice as a result.

Having achieved the outcome she desired, namely, to be entitled to instruct her own firm of Solicitors, Miss D then became unhappy that C was not prepared to act for her. She said this was because C were not prepared to give an undertaking that they would seek A’s costs in the litigation. That is a common feature of litigation, and I can fully understand why C might not find this attractive and why A would not release their file without agreement being reached. But that’s not a matter for ARAG.

Given A’s comments about the reasons why their relationship with Miss D broke down, ARAG could have taken the decision to cease funding the claim altogether. I say so because it’s a term of the policy that a policyholder co-operates fully with a their representative and gives them any instructions they’re asked to give. The policy also says that if the appointed representative refuses to continue to act or a policyholder with good reason or if a policyholder dismisses the appointed representative without good reason, then cover will end immediately unless ARAG agree to appoint another appointed representative. Based on the reasons given by A for the deterioration in their relationship with Miss D, I think ARAG could have taken the view that they wouldn’t have provided ongoing cover at all. In this case they didn’t and offered Miss D the opportunity to engage her own Solicitor after B said they had a conflict of interest. I think that was reasonable in the circumstances.

Miss D has said that being left without representation has meant that she couldn’t find anyone else to act for her. For the reasons I’ve set out above I don’t think that ARAG did anything wrong by offering her the two panel firms they had available to them and then leaving it open to Miss D to source her own Solicitor. Whilst that might not have been what she wanted after C refused to act for her, I haven’t been provided with any evidence to support that no other firm would under act for her under any circumstances. And given ARAG did query whether A would consider being instructed again by Miss D, I think they did all they reasonably could in the circumstances.

Turning now to the level of service ARAG provided Miss D. ARAG have accepted this fell short in terms of response times and delays. They offered Miss D £150 in respect of these. Although I accept that this would no doubt have been frustrating for her at a difficult time, I haven't seen anything to support that they caused Miss D any further detriment to her claim that ARAG is responsible for. As such I'm satisfied that the sum offered by ARAG was reasonable compensation in the circumstances.

Finally, Miss D has said the policy terms didn't provide her with enough information for her to understand how her claim would be handled. As the investigator said, the terms can't provide for every individual scenario that might occur during the course of a claim. In this case however I'm satisfied that the terms did set out when Miss D would have the freedom to instruct her own Solicitors and the parameters of cover more generally including the terms I've referred to in this decision.

My final decision

For the reasons set out above, I don't uphold Miss D's complaint against ARAG Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 19 February 2025.

Lale Hussein-Venn
Ombudsman