

The complaint

Mr M and Mrs W's complaint is about the handling of a claim under their legal expenses insurance policy with ARAG Legal Expenses Insurance Company Limited. Mr M has been the main correspondent on the complaint, so I will refer to him throughout.

What happened

Mr M and Mrs W made a claim under their policy with ARAG in 2017 as they wanted legal representation in relation to a dispute over work done on their home. The claim was accepted and one of ARAG's panel of pre-approved solicitors was appointed to act for them. The claim progressed but Mr M was not fully satisfied with the service provided by the panel solicitors. In July 2023 Mr M contacted ARAG to inform it of concerns he had about the solicitor's conduct of the case.

ARAG contacted the panel solicitors about this and over the next few months there was further correspondence between ARAG and Mr M and the solicitors. In September 2023 the solicitors said they had not heard from Mr M in response to a request that he sign some forms about how costs would be dealt with on settlement of the case and that they would have to come off the court record as acting for him. This was resolved and they continued to act. Towards the end of 2023, the other party made an offer to settle the claim. The solicitors advised that the offer was reasonable and should be accepted. The offer was accepted and the legal claim was settled at end 2023. However, Mr M is very unhappy with the handling of the claim and the events in 2023 in particular.

ARAG does not accept that it did anything wrong. Mr M therefore referred the complaint to us. Mr M has made a number of points in support of the complaint. I have considered everything he has said but have summarised his main points below:

- The legal claim took seven years to resolve because ARAG failed to oversee the solicitors properly.
- The settlement achieved is materially lower than the claim was worth. ARAG's actions and failure to hold the solicitors to account compromised the outcome of the legal claim. As a result, the legal costs were around £110,000, far more than the claim was worth.
- He began to raise his concerns about the solicitors in 2019/2020. He was told he could not change solicitors and had to continue with them. ARAG said repeatedly that he could make a claim for professional negligence against the solicitors instead.
- ARAG reviewed the offer and said counsel's advice should be obtained on it, as it excluded costs and it would not therefore be able to recover any of its costs. Counsel who had advised on the case previously was not responding to the solicitors but, instead of finding alternative counsel, ARAG and the solicitors colluded to decide that counsel's opinion was not needed and he was pressured into accepting the offer.
- While he was waiting for ARAG to review the matter, the solicitors were threatening they'd come off the record as acting for him.
- The panel solicitors told him the indemnity limit might be used up, so he should get after-the event insurance but ARAG said it did not provide such cover, which is

incorrect. ARAG is one of the biggest providers of this insurance but it did not offer him this cover.

- He asked ARAG to review his legal claim but was told it does not have legal experience but this is untrue, as it has internal legal counsel and a number of employees are legally qualified. ARAG should therefore have conducted a legal review of his claim.
- ARAG and the solicitor colluded together to provide unreasonable explanations of their actions, or would contradict each other.
- ARAG failed to provide adequate answers to his concerns and points raised and rarely put anything in writing.

Mr M says the whole matter has had a considerable toll on him and Mrs W and caused considerable stress.

One of our Investigators looked into the matter. He said that we could not consider the actions of the solicitors themselves. The Investigator also said that while ARAG is not responsible for the actions of the solicitors and cannot interfere with their handling of a legal claim, it did give Mr M the impression it was investigating this which caused some confusion over around a two week period. However, he said that while this raised expectations, there was no evidence that it impacted Mr M's claim and so did not think it warranted compensation. He said the advice as to the offer was the responsibility of the solicitors and not ARAG and it was also not responsible for how long the case took to settle.

The Investigator also said that ARAG had no obligation to offer after-the-event insurance direct to Mr M when it is usually arranged by solicitors. He also said that it was not ARAG that asked the solicitors to come off the record, instead it looked like ARAG had tried to persuade them to delay doing so.

Mr M was also unhappy with the handling of his complaint but the Investigator explained that we cannot consider this.

Mr M does not accept the Investigator's assessment, so the matter has been passed to me.

Mr M has made a number of points in response to the Investigator. Again, I have considered everything he has said but have summarised his main points below:

- He is only complaining about ARAG and is not complaining about the solicitors.
- If ARAG cannot consider the actions of the solicitors, why did it not make this clear and refer him back to the solicitor?
- Instead, ARAG on numerous occasions led him to believe that ARAG would assist with the matter and took over ownership of the issue in September 2023 and told him not to do anything until it'd heard back from the solicitors. Little consideration has been given to this.
- Having told him not to do anything, ARAG then said cover would be withdrawn if he did not sign forms sent to him by the solicitor.
- The forms were about the order of priority for cost recovery to ensure that ARAG receive its costs first. The solicitors threatened to come off the record if they were not signed.
- ARAG has admitted it was their instruction to the solicitors to agree coming off the record.
- ARAG made it clear that only counsel could advise on the offer. If ARAG's role is only to insure him, then why does it have a technical review team and why did they direct counsel review the offer?
- He received poor guidance and oscillating advice from ARAG.

- This was all at a critical point in the claim and was extremely stressful.
- He was informed that in certain instances an independent review of cases was performed and that it does review how matters are progressing to provide assurance on how money is being spent.
- In addition to the written communications, there were numerous conversations on this matter and ARAG admitted fault.
- He wants a review as to why after-the-event insurance was suggested to him and the process of obtaining this as a lay person. Why didn't ARAG make it clear that it was not an option in this matter?
- If we cannot consider complaint-handling then who can?

Further information

Mr M says that the information he received from ARAG as a result of a subject access request shows that ARAG accepted its shortcomings on several occasions. This was a recurring theme throughout the claim and I should therefore go through this information to have a complete understanding of the sequence of events.

ARAG has provided us with its complete file, which includes all communications since 2017 between Mr M and ARAG and between ARAG and the solicitors, as well as some internal communications. This would include what has been sent to Mr M in response to his subject access request. I am satisfied that I have all the necessary information required to fairly determine this complaint.

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.

Most legal expenses insurance policies work in the same way, with insurers having a panel of pre-approved solicitors. The insurers will usually have pay agreements with these pre-approved solicitor firms, which is aimed to make this more cost effective and they will have been audited and checked for their suitability to deal with certain legal issues.

As Mr M is aware, we do not assess the merits of the legal claim, or the conduct of the legal case, that is not within our expertise. Our remit is to assess complaints about regulated activities, such as carrying out an insurance contract. Therefore, in a case such as this, we can only assess whether the insurance claim has been dealt with fairly.

We also do not hold legal expenses insurers responsible for the solicitors they may appoint when handling a claim. The solicitors are not agents of ARAG and are not sub-contractors as such, even if they are appointed by them. It is not therefore vicariously liable for any acts or omissions on their part. They are independent professionals and the insurer has no right to interfere or dictate how they conduct the actual legal case. The solicitors' primary duties are to the courts and their clients (in this case Mr M). And again, as Mr M is aware, any complaint about the service provided by the legal professionals involved in this case should be directed to the relevant body - the Legal Ombudsman.

ARAG does still have some responsibility, however, including to ensure as far as possible that the solicitors it appoints to act on behalf of policyholders are suitable and appropriate for the instructions in question. And it will monitor and audit generally the solicitors on its panel but this does not mean it will monitor or audit the conduct of each legal claim as it is in progress. I haven't seen any independent evidence that the panel solicitor was not suitably qualified to deal with this matter or that ARAG should have been aware of

any deficiencies in their service generally.

ARAG also has a duty to consider any general complaint made about any solicitors acting under the policy and treat its policyholders fairly, if there are any issues that are within its power to resolve. So, while it cannot interfere with, or influence the handling of any legal claim, it can look into issues raised by a policyholder generally and it might be appropriate sometimes for it to take action to resolve the issue, such as agreeing to appoint another firm.

Given what I have said above, I am not able to look into some of the issues Mr M has raised, such as the time taken by the panel solicitors to deal with the legal claim, their advice on the settlement, or the amount of costs incurred.

When Mr M raised concerns about the handling of his legal claim, ARAG tried on various occasions to assist and asked the solicitors for clarification of the position at various points. Mr M wanted ARAG to conduct a review of the legal claim but even though some of its staff might be legally qualified, it could not do so.

ARAG passed Mr M's concerns to the solicitors and asked them to address them. I think that was appropriate, as Mr M's concerns were about the actions of the solicitors. I am also satisfied that it did respond to the points raised by Mr M. He is unhappy that sometimes ARAG did not confirm matters in writing, but I cannot see that there was any specific request that it communicate with Mr M in writing. In any event, it appears that telephone discussions were often followed up in writing. I do not consider that ARAG did anything wrong in this regard.

I can see that Mr M thought ARAG was investigating the solicitors' handling of the case, as one email from ARAG suggested it would review "*correspondence in regard to ... [the solicitors'] file*". I think the wording of that email was unclear and can see why Mr M thought ARAG would be looking into matters more than it could. In addition, Mr M was waiting to hear from ARAG following that email and then received correspondence that the solicitors intended to come off the court record. The evidence I have seen shows that the solicitors said they would have to come off the court record, if Mr M did not respond to them. ARAG then wrote to Mr M about this. I have seen no evidence that ARAG suggested the solicitors come off the record but it agreed the solicitors could do so, if Mr M did not comply with the policy terms. I have also not seen anything to support Mr M's assertion that ARAG accepted it gave this instruction to the solicitors. However, I do agree that this correspondence could have been handled better. Having said that, I also agree with the Investigator that while this would have been frustrating and stressful, especially given the stage of the legal claim, and ARAG raised Mr M's expectation, no award is warranted for this. I say this because, sometimes things go wrong but there is no automatic right to compensation. The position was resolved relatively quickly, cover was not withdrawn, and it did not impact the progress of the legal claim or the settlement.

Mr M says there were several incidences when ARAG accepted responsibility for shortcomings over the handling of his claim but I have not seen any evidence of anything that would warrant an award of compensation.

I can also see that ARAG did also ask the solicitors about changing the fee earner acting for Mr M but it was felt this would incur significant costs and the matter was approaching trial so would not be a reasonable action. I think ARAG acted fairly and reasonably in dealing with Mr M's concerns about the solicitors' actions.

As stated, ARAG is entitled to updates and to review matters at critical stages of the process, such as when an offer to settle has been made. And it did do this by asking its technical team internally to consider the offer received from the other party.

The email from ARAG to the solicitors on 27 December 2023 says: *“I’ve spoken with our Technical Team in regards to the offer. They’ve advised that the costs will be assessed by our costing unit as these costs are far more than the value of the claim as per counsel advice. Considering the offer of £20,000 is near what Counsel has recommended then we will follow your advice on this but ... [we] would not top up any damages. They have suggested whether it might be an idea to go back to counsel to see if they think it is reasonable that costs are included?”*

In response, the solicitors said counsel was away but they did not feel his advice would be any different in regards adding costs and this would not have affected the settlement Mr M received. The offer was for damages of £20,000 and Mr M had previously made an offer to the third party for £26,500. The solicitors said they thought the offer was reasonable and should be accepted.

ARAG confirmed that it would accept the solicitors’ advice on the matter and that it would indemnify the costs.

It was therefore not ARAG that determined whether the offer should be accepted or not. It did suggest that counsel be asked to advise, mainly because the offer meant there would be no recovery of its costs, but it was ultimately for the solicitors to advise on whether the offer should be accepted or not. I do not therefore think ARAG did anything wrong here; it was not obliged to insist on obtaining further advice from counsel or to conduct any further review of the advice of the solicitors or their actions. Having considered everything carefully, I am not persuaded that there is any basis for saying Mr M was forced to accept the offer, or that he would have achieved a higher settlement, but for anything ARAG did wrong.

I agree with the Investigator that ARAG’s actions were not unreasonable and I don’t think there was anything in these communications that would have meant it should have taken any further action. It was entitled to rely on the solicitor’s advice and trust they were handling the legal case in accordance with their own professional standards. This does not amount to collusion as Mr M has alleged. In my opinion, ARAG tried to assist and followed the solicitor’s advice, which is what I would expect.

As explained above, I can only address whether ARAG acted fairly and reasonably as an insurer providing indemnity for Mr M’s legal costs and I think it did. There is no evidence that ARAG did not act in Mr M’s interests or that it caused any unnecessary or avoidable delays in his legal claim, or that it compromised his legal position or the settlement achieved in any way.

After-the-event insurance

ARAG does provide after-the-event insurance but this is usually arranged through solicitors they do not offer it direct. I am not persuaded it was unreasonable that it did not agree to do so in this case.

I cannot investigate why after-the-event insurance was suggested to Mr M, as this was done by the solicitors, or how an individual can obtain after-the-event insurance as this is not within my remit.

Mr M may have been frustrated that ARAG could not advise him on this but I do not think it did anything wrong here and I do not think that it warrants any award.

Complaint-handling

As the Investigator explained, complaint-handling is not a regulated activity in its own right, so I cannot consider ARAG's handling of Mr M's complaint. Any breach of its regulatory duties would be a matter for the Financial Conduct Authority.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs W to accept or reject my decision before 22 April 2025.

Harriet McCarthy
Ombudsman