

## **The complaint**

Mr C and Mrs P are unhappy ARAG Legal Expenses Insurance Company Limited turned down a claim they made on the tenant default section of their residential landlord insurance policy.

Although the policy is in joint names as the complaint has been brought by Mr C, I'll refer to him in this decision. All references to ARAG include its agents and claims handlers.

## **What happened**

In October 2023 Mr C claimed on his policy as his tenant had stopped paying rent. ARAG accepted the repossession claim under the legal expenses section of his policy. But it said it wouldn't be providing cover for rent arrears as the policy required a satisfactory reference to have been obtained for the tenant which it didn't agree had been done in this case.

In her most recent view our investigator noted the reference for the tenant showed she had a history of non-payment and wasn't an acceptable risk. And it didn't appear a reference had been provided from an employer or other financial source. She didn't think it was unreasonable of ARAG to conclude a satisfactory reference hadn't been provided and decline to cover the claim for unpaid rent.

Mr C didn't agree. He queried who the reference should be satisfactory to. In this case it had been for him. He didn't think it would have been reasonable for him to consult a dictionary before taking out the insurance. And the terms didn't say the tenant had to be an acceptable risk. The reference provided did include an income check (and referenced evidence which had been provided in support of that). 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.

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

I've looked first at the terms and conditions of Mr C's policy. The 'Tenant Default' cover says where a claim has been accepted for repossession (which it had in this case) "*we will pay your rent arrears which your tenant or ex-tenant still occupies your property up to a maximum of 12 months for any one claim, or the maximum number of monthly payments covered under your policy whichever is lower.*"

However, that's provided "*you have obtained a satisfactory reference for each tenant and each guarantor from a referencing service before the tenancy started*". The policy goes on to explain that "*The reference must include: written references from a previous managing agent or landlord; an employer (or any other financial source); and a credit-history check (including the Enforcement of Judgments Office, County Court Judgments and bankruptcy)*".

In this case I appreciate a reference was obtained from a referencing service. And that does say what the income of the tenant was and that it was confirmed by "*Documents provided*". However, it's not clear what those documents were and whether they included a written reference from an employer (or other financial source). So I'm not satisfied the policy definition of a reference has been met.

In any event even if Mr C could show evidence was provided the reference still needed to be "*satisfactory*". Mr C has argued the tenant was satisfactory for him. I accept that's the case. But I don't think that's the test which should be applied in relation to whether the terms of the policy have been met. For any contract of insurance the insurer will set out the risks it's prepared to cover by means of an insuring clause and will then seek to limit the risk to it by means of exclusions and conditions. And the Supreme Court in the case of 'Financial Conduct Authority (Appellant) v Arch Insurance (UK) Ltd and others' said, in relation to the interpretation of insurance contracts, "*the overriding question is how the words of the contract would be understood by a reasonable person*".

So the question isn't whether Mr C considered the tenant's reference to be satisfactory but how a reasonable person would have understood the term. As the policy doesn't define satisfactory I think it's appropriate to take into account dictionary definitions to decide what a reasonable interpretation of that is. Having done so I think it would commonly be understood to mean "*adequate or suitable; acceptable*". And in this case the tenant reference said "*Based on the information obtained, [referencing agency] cannot recommend this applicant as being acceptable for Tenancy*". The reference is marked as "*Not acceptable*".

I don't think that could reasonably be regarded as being a satisfactory reference for the tenant. So I've gone on to consider whether it's reasonable of ARAG to turn down the claim on the basis this policy condition hadn't been met. It might not be if Mr C could show, although the reference was unsatisfactory, that hadn't increased the risk to ARAG of a successful claim being made on the policy. However, I don't think that is the case here. The reasons why the reference was deemed unsatisfactory included that the tenant had three unsatisfied County Court Judgements against her. I think that's an issue which goes to the heart of her credit worthiness and ability to maintain the tenancy. So I don't think it was unfair of ARAG to turn down the claim Mr C made.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs P to accept or reject my decision before 27 February 2025.

James Park  
**Ombudsman**