

The complaint

E, a limited company, complains about what ARAG Legal Expenses Insurance Company Limited did after it made a claim on its Landlord's Legal Protection policy.

E is represented by its director, Mrs A. All references to ARAG include its agents and claims handlers.

What happened

In April 2023 Mrs A contacted ARAG as E's tenant was in arrears. She wanted assistance with repossession proceedings and for the policy to cover the arrears. After requesting further information from Mrs A, ARAG asked a panel firm of solicitors to consider the repossession claim. An internal note said it wouldn't be covering the 'tenant default' claim (the rent arrears) because they had been reported to it more than 90 days after the rent was due. E wasn't informed of that decision. In June 2023 the panel firm said E had asked it to close its file so no further action was required.

Mrs A contacted ARAG again in February 2024 as E's tenant had defaulted on her payment plan (agreement to that plan was why the previous repossession claim hadn't progressed). She asked for the claim to be reopened. ARAG referred the matter back to the panel firm. In March Mrs A asked when payment would be made for rent arrears; ARAG said those wouldn't be covered because they weren't reported within 90 days of non-payment.

Mrs A said that hadn't previously been communicated to her. In response to her complaint ARAG apologised for not informing her of that previously. And it agreed to pay £75 in recognition of the impact of that on E. But it said in addition to the late reporting of the arrears the policy also required that a satisfactory reference be obtained on the tenant prior to the tenancy starting. It said the reference supplied in this case was missing income and employment checks, a landlord reference and was only an interim assessment. So it didn't consider that met the policy terms.

In her most recent view our investigator said E had provided us with a 'Tenant Assessment Report' which said a landlord and employer reference had been obtained and detailed a credit history check. So she thought a satisfactory reference has been obtained. In relation to late notification of rent arrears she was satisfied E hadn't been made aware of those arrears by its letting agent until February 2023 which was less than 90 days prior to the claim being made to ARAG. And she thought if ARAG had provided clear information to E about its reasons for declining the claim at an earlier date it was likely it would have provided this evidence to it.

She said ARAG should reconsider the claim (which could include new concerns it had raised about whether a guarantor should have been obtained for the tenant). And it should pay E a total of £200 in recognition of the inconvenience it had been caused.

E accepted her outcome though highlighted the amount of Mrs A's time that had been taken in dealing with this matter and the cost to it of that. And it raised concerns about how the underlying repossession claim was being handled.

ARAG didn't agree. It continued to feel the terms of the policy hadn't been met in relation to both the reporting of arrears and obtaining satisfactory references. And it said the reference that had now been provided said a guarantor was required. So if that hadn't been done the outcome of the claim would be the same in any case. It didn't agree to reconsider the claim but did agree to pay the £200 compensation.

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 don't think it's in dispute E's policy includes 'Tenant Default' the relevant section of which says *"we will pay your rent arrears while 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, amongst other things, cover for 'Tenant Default's is conditional on the policyholder obtaining *"obtaining a satisfactory reference for each tenant and each guarantor from a referencing service before the tenancy started"*. And the policy says that 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)"*.

ARAG said in May 2024 the reference E provided didn't meet that term because it was an interim assessment and was missing income and employment checks, and a landlord reference. And in its submission to our service it said *"the main reason for the decline of Tenant Default is that satisfactory references have not been received"*.

However, E has subsequently provided a 'Tenant Assessment Report' which does contain a landlord reference and details the tenant's employment status and income. It also says that was confirmed with the applicant's employer. And while the report is dated 14 May 2024 it says *"This report supersedes our earlier report as a duplicate report has been requested. Please note, the credit information and 3rd party references have not been revisited and the data is as per our original final report, which was returned to branch on 21/05/21"*. So I think it likely the information in this report matches that included in the original produced in May 2021. And this report does appear to contain the missing information ARAG previously relied on to argue the reference wasn't satisfactory.

I appreciate it was only provided more recently and so wasn't available at the point that outcome was reached. But I think it's reasonable to conclude if ARAG had explained why it was turning down the tenant default claim when it should have done (May 2023) then E would have provided the full 'Tenant Assessment Report' at that point; it obtained this information four days after ARAG issued its final response to the complaint. So I think it's because of an error on ARAG's part this information wasn't available to it sooner.

ARAG has also raised concerns about late notification of the rent arrears. I don't find its position on this point clear. In May 2024 it told E the claim had been reported *"after 90 days of the first rent arrears"*. That's also what it relied on when making its initial submission to our service. However, in response to our investigator's initial view it said a claim for tenant

default cover must be reported to ARAG promptly and within 45 days of the date the rent was due.

I assume that's because, while E's policy says it doesn't cover *"any claim reported to us more than 90 days after the date you should have known about the insured incident"*, it also says *"for claims under insured incident 5 Tenant Default, please contact us within 45 days if any part of the rent owed under the tenancy agreement is still unpaid after the date it was first due"*. The preceding wording of the policy says *"Please note that all claims other than claims under insured incident 5 Tenant Default must be reported to us no more than 90 days after the date you should have known about the insured incident"*.

I think it's clear from that that all claims must be reported within 90 days of when the policyholder should have known about the insured incident. But I'm not persuaded ARAG can reasonably argue that not reporting a tenant default claim within 45 days is a breach of the terms given the wording requests rather than requires that to be done. It doesn't say that must happen (as it clearly could have done and does for other claims).

In any event while I think ARAG are right to say arrears were present from October 2022 (and an amount showing prior to that related to a rent reduction for clearing garage space) I've not seen evidence to show E was informed of that until 9 February 2023. That was when the letting agent who payments were being made to informed E the tenant hadn't made payment for October 2022 and January 2023. I don't think E would reasonably have been aware of this prior to that given the letting agent said in relation to the arrears *"this amount should have been deducted against your rental payments for those months but it was not"*.

E then contacted ARAG to make its claim on 2 April 2023. That's 52 days after it became aware of the rent arrears so clearly within the 90 day reporting timeframe. I appreciate it's outside of 45 days but I've already explained why I'm not satisfied that represents a policy condition. Even if it does I'm not persuaded ARAG's position has been prejudiced by a seven day delay in the arrears being reported to it (especially as it then took ARAG until 25 April to check policy coverage and acknowledge the claim and a further 10 days to request basic information in support of it).

As a result, for the reasons I've explained, I'm not satisfied ARAG has correctly and fairly turned down E's claim based on the reasons it gave in its response to the complaint and in its initial submissions to our service. I appreciate ARAG has now set out other concerns it has about the claim (in particular whether a guarantor was obtained which the final 'Tenant Assessment Report' said would be required). But those aren't points it's previously relied on and I don't think ARAG can fairly make a decision on whether that does provide grounds to turn down the claim without obtaining and taking into account information from E about its position on that. So I agree with our investigator that the fair outcome is for ARAG to reconsider the claim against the policy terms. If E is unhappy with any decision it then makes that's something which could form part of a fresh complaint.

I also agree that E will have been caused some unnecessary inconvenience as a result of what ARAG got wrong. It's referenced the amount of time Mrs A had to put into dealing with this matter which it says is a loss to the business. I accept there will be some inconvenience here but I'm also mindful of the fact E would have had to put time and effort into dealing with the underlying legal claim regardless of any failing by ARAG. So I'm not persuaded there is a clear causal link between the figure for costs it's referenced and what ARAG got wrong. I think the £200 our investigator recommended (and which ARAG has already agreed to pay) does enough to put things right here.

Finally, E has set out concerns it has about how the panel firm handled its legal claim including the time taken and a hearing date being missed. However, the actions of a panel

firm when carrying out their legal role aren't something we can consider. That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. '*Carrying out a contract of insurance*' is a regulated activity. That's why we can consider what ARAG did here.

However, the actions of the solicitors acting in their legal capacity aren't a regulated activity and don't fall within any of the other covered activities contained in our rules. So that isn't something we can look at; the solicitors are independent professionals with their own regulator and complaints procedures. If E is unhappy with how the panel firm has handled its claim that's something it can pursue through that firm's complaints procedure and potentially then to the Legal Ombudsman.

Putting things right

ARAG can't turn down the claim E made for the reasons it's previously cited and will need to reconsider this against the policy terms. It will also need to pay E £200.

My final decision

I've decided to uphold this complaint. ARAG Legal Expenses Insurance Company Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 7 March 2025.

James Park
Ombudsman