

The complaint

Mr W's complaint is about a claim he made on his ARAG Legal Expenses Insurance Company Limited ('ARAG') which was declined.

Mr W says this is unfair and wants ARAG to provide him with assistance under the policy.

In this decision all references to ARAG include their claims handlers.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

For clarity, I appreciate that when Mr W initially brought his complaint to the Financial Ombudsman Service, he referenced three claims that were declined under legal expenses policies. As I understand it his complaint about the first of those claims has been considered separately by the Financial Ombudsman Service and Mr W has been asked to provide further details of the second claim so that the insurer of it can consider that further, following which this Service can look into things for him.

I haven't addressed those matters within this decision. Rather I have only be considered ARAG's conduct in respect of third claim Mr W refers to which was made under this policy for problems with his neighbour concerning the height of their trees, as this is what ARAG addressed in their final response letter.

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 agree with the conclusions reached by the investigator for the reasons I've set out below.

It's a requirement of many legal expenses policies that any intended claim arises out of an event which occurs during the period of insurance. Mr W's policy is no exception. It says:

"We agree to provide the insurance described in this section, in return for payment of the premium and subject to the terms, conditions, exclusions and limitations set out in this section, provided that:

...

2. the date of occurrence of the insured incident is during the insured period."

"Date of occurrence" is defined as:

"the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, the date of occurrence is the date of the first of these events. (This is the date the event happened, which may be before you became aware of it)".

As a general rule, you take out insurance cover for something which may or may not happen in the future. So, in my judgment, it isn't unfair in principle for a legal expenses insurer to exclude claims for things which started to happen before cover began. There are special policies available which are designed to cover such disputes, but this isn't one of them.

Mr W's policy with ARAG started in November 2022 and although he says the event which gave rise to the claim happened during the period of insurance, I don't agree. It's clear to me from the claim Mr W submitted to ARAG that problems with his neighbour in relation to the height of his trees started after moving into his property in 2019. In his claim, Mr W said he'd asked his neighbour to reduce the height of the trees and tried to speak to the land agents for over six years to resolve this issue. He references that during this period the branches from the trees had nearly hit his son and caused damage to his property. Eventually Mr W instructed a tree surgeon to cut back some of these branches from his own property, at which point his neighbour accused him of trespass.

I understand why Mr W feels that the event that gave rise to the claim were the more recent incidents but it's clear to me the origins of this dispute- namely the problems with the height of his neighbour's trees- went back many years and certainly before the policy was in place. It makes no difference therefore that further issues unfolded during the policy year on which ARAG was on cover and that this prompted Mr W to make a claim on his policy. The fact is there were problems with Mr W's neighbour that he was aware of and were entirely related to the same dispute that arose at the time of his claim before in the policy was in place. The fact that Mr W didn't choose to make a claim on his policy prior to this is therefore immaterial.

I note that ARAG have referred Mr W to make a claim on the policy he had in place at the time the problems with the trees started. I don't know if Mr W has done this but if not then he should contact the insurer of the policy he had in place at the time should he require further assistance.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 March 2025.

Lale Hussein-Venn
Ombudsman