

The complaint

Mr and Mrs G complain that ARAG Legal Expenses Insurance Company Limited trading as DAS would not agree to cover a claim on their legal expenses insurance policy.

What happened

Mr and Mrs G made a claim on their policy to cover the legal costs of a dispute with a contractor who had carried out work for them. They said he had retained money paid for materials that he hadn't provided, and carried out work of poor quality.

ARAG accepted the claim and referred it to its panel firm of solicitors to assess. The solicitors said there was a reasonable chance of winning the case, but even if Mr and Mrs G were successful, they didn't have reasonable prospects of recovering any money from the other party. As a result, ARAG declined to cover the claim, so Mr and Mrs G complained.

When the complaint was referred to this Service, our investigator said ARAG's decision was fair. Mr and Mrs G disagree and have requested an ombudsman's 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 policy terms say that to be covered, a claim must have reasonable prospects of success, which it defines as follows:

"For civil cases, the prospects that you will recover losses or damages (or obtain any other legal remedy that we have agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%. We, or a preferred law firm on our behalf, will assess whether there are reasonable prospects"

It's standard practice to include a requirement that cover will only be provided if a claim is likely to be successful. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely anything will be recovered from the other party. Insurers will obtain legal advice about the prospects of success and they're entitled to rely on that advice unless it's obviously wrong. And the definition of prospects of success means Mr and Mrs G must show they have a reasonable chance not just of winning the case, but of recovering damages from the other party.

ARAG referred the claim to its panel firm of solicitors. They said the chance of recovering any money from the other party was less than 50%; he did not own any property, they hadn't identified other assets against which they could recover, and he already had two unsatisfied county court judgments against him. So although there was a reasonable chance of winning the case, if they obtained judgment against him it was unlikely they would be able to enforce that judgment.

An insurer is entitled to rely on legal advice, unless it's obviously wrong. The advice is from someone suitably qualified and there's nothing to make me conclude it's wrong.

Mrs G says there may be other ways of enforcing a judgment. She challenged the legal advice and her comments were put to the panel solicitor. I can see he considered her points and gave a detailed explanation as to why he didn't think there were prospects of recovery. For example - although the other party might have items such as tools or machinery, there was no evidence of what these were worth or even whether he actually owned them. And, as he had previous court judgments that had not been settled, the likelihood was that if they got judgment against him, he wouldn't pay that either.

The legal expenses policy will provide cover for legal costs to pursue claims that satisfy its terms and conditions. Currently, the legal advice means this claim doesn't. So ARAG is entitled to refuse the claim. I wouldn't expect an insurer to pay legal costs to pursue a claim where the legal advice is that it's unlikely any money will be recovered.

If Mr and Mrs G can provide evidence of assets of value that the other party owns, and against which a judgment could be enforced, I'd expect ARAG to reconsider the matter. Alternatively, they can obtain a legal opinion at their own expense – and if that advice is favourable, ARAG has said it will refund the cost.

I appreciate it's frustrating for Mr and Mrs G, especially as the advice is they have a good case. But I'm satisfied ARAG has dealt with the claim fairly and in line with the policy terms.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 28 February 2025.

Peter Whiteley
Ombudsman