

The complaint

Mr J complains that he was provided with incorrect information when he contacted his breakdown provider which resulted in him incurring additional costs.

The policy was underwritten by ARAG Legal Expenses Insurance Company (ARAG) - and was administered by a company who I'll refer to as 'C'. But for ease of reference, I'll refer to the actions of the administrator as being those of ARAG throughout.

What happened

Mr J held a breakdown insurance policy with ARAG that provided cover for, amongst other things, callout and recovery services.

Mr J contacted ARAG in June 2024 to request assistance after his keys had been locked in the boot of his car. During that call, Mr J was advised that he wasn't entitled to a recovery back to his home given the distance he was from his address. Instead, ARAG advised they could put Mr J in touch with a locksmith to gain access to his car but said he would be liable for any costs associated with having the locksmith attend.

However, the information ARAG provided was later established to be incorrect; and ARAG confirmed as Mr J was actually far away enough from his home address; this meant they would have been able to arrange a home recovery.

Mr J wasn't happy with how ARAG had handled the claim and complained. He said, because of the incorrect information they'd given him, he'd had a locksmith attend to gain access to his car which had cost him £504. He said if ARAG had told him he was eligible for a home recovery, he could have used this option and avoided these costs.

ARAG considered the complaint but didn't uphold it. They said while they agreed Mr J had been given incorrect information, this didn't make a difference to the outcome, or the costs Mr J had incurred. They said this was because Mr J would always have had to have a locksmith attend to gain access to his vehicle – even if they had recovered it back to his home. ARAG said that, in any event, at no point was a recovery requested as Mr J had asked for a roadside solution but no recovery address was provided.

Mr J remained unhappy with ARAG's response – so he brought the complaint to this Service. An Investigator looked into what had happened and recommended that the complaint be upheld. They said if ARAG hadn't given Mr J incorrect information, Mr J would have been able to have the choice to recover his car back to his home address and make a decision on how best to gain access to his car. The Investigator thought it was fair and reasonable for ARAG to refund Mr J the £504 paid, plus 8% simple interest, as well as £100 for distress and inconvenience caused.

Mr J agreed with the Investigator's recommendation; but ARAG didn't. They said the cost incurred with the locksmith was a private agreement and was not covered under the policy. They said if they were to provide a full refund plus interest, this would result in significant betterment to Mr J, which wasn't covered under his breakdown policy. But they did make an

offer of £100, which they said was the cost of a recovery back to Mr J's home, plus £50 compensation for the error they made.

Mr J didn't think this was a fair way to conclude his complaint and maintained that if ARAG had correctly advised him of his options for a home recovery, he could have used this option and used his spare key to gain access to his car or shopped around for a cheaper deal. He said he felt pressured into using a locksmith to get his keys recovered as he had security worries given his car was in a supermarket car park, unlocked, and with the roof down while the keys were locked in the boot.

I issued a provisional decision of this complaint, and I said the following:

"ARAG have confirmed that they gave incorrect information to Mr J when he called them to request assistance. As such, I need to consider what the impact was to Mr J as a result of this incorrect information.

As part of my review of this complaint, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice. The relevant rules say that ARAG was obliged to provide Mr J with information that was clear, fair, and not misleading, in line with their obligations under Principle 7 of the FCA Handbook: Communications with clients (see PRIN 2.1 The Principles) and ICOBS 2.2.2R (Clear, fair and not misleading rule).

This approach enables a customer to make an informed decision about how they want to proceed with a claim. And here, because Mr J wasn't told he had the option to recover his vehicle to his home address, this created a situation where he had fewer options in which to proceed. And I'm satisfied that this created a disadvantage to Mr J, given his concerns over leaving his car unlocked in a public carpark.

I've taken on board ARAG's submissions that Mr J didn't specifically request a home recovery. But Mr J had called them in a stressful situation, without the benefit of his policy wording to hand to refer to. And as his insurer, I would have expected ARAG in this situation to provide him with his options in order to allow him to make a decision about how he wanted to proceed. And because Mr J wasn't correctly advised of his options, I'm satisfied ARAG acted unfairly.

I appreciate ARAG have made references to Mr J's policy terms and said that the cost of a locksmith is not covered under his policy. But this is not the relevant test in this complaint. Instead, the costs incurred would be considered a consequential loss. When thinking about whether an insurer is liable for any consequential losses because of something they did wrong, I need to ask the following questions:

- 1. Is the loss a result of what went wrong?*
- 2. Is the loss reasonably foreseeable?*
- 3. Were reasonable steps taken to mitigate the loss?*

In relation to question 1, I find that the loss was a result of ARAG's incorrect information given they created a situation where Mr J felt he had no other option than to use a locksmith to gain access to his car.

In relation to question 2, I find that this was reasonably foreseeable. I say this because I've considered Mr J's testimony, and I'm persuaded that his security concerns would be reasonable, given his car was in a public car park, unlocked, and with the roof down while the keys were locked in the boot. And because he

understood he had no other choice than to use a locksmith, he would have proceeded with this option.

In relation to question 3, I find that Mr J's took reasonable steps to mitigate the loss, given he used Call Asist's recommended locksmith.

It follows that I'm satisfied Mr J's incurred costs were the result of ARAG providing incorrect information. While ARAG says that Mr J would always have needed to have a private locksmith attend to retrieve the key; Mr J has said he ultimately managed to locate his spare key to his car; so if ARAG had provided the correct information to him, and he had been recovered home, Mr J would have been able to access his car without any locksmith costs being incurred at all.

What was the impact

I think Mr J suffered distress and inconvenience as a result of this matter. He had to pay the cost of the locksmith himself and then had to spend time and effort to resolve this complaint. So, I think ARAG should pay Mr J £100 compensation for the distress and inconvenience caused.

I'm satisfied this sum is in line with similar awards this Service would make and reflects the impact ARAG's actions had on Mr J. And I find that awarding it results in a fair and reasonable conclusion to this particular complaint."

I concluded that I was likely to uphold the complaint as I was satisfied that ARAG had caused a loss to Mr J. I invited both parties to respond to my provisional findings.

Mr J responded and confirmed he agreed with my provisional findings. He also clarified that the invoiced cost was £504.

ARAG also responded but didn't agree; they didn't think I'd reached a fair and reasonable outcome. They said Mr J's car was secure in a car park and this meant he could have found the most reasonable quote he could for a locksmith. They also said that as Mr J was in close proximity to his home address, he could have walked home and tried to locate his spare key. ARAG concluded that they felt it was unfair for them to pay the costs of the locksmith for what they called a small human error.

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.

I've taken on board ARAG's reply to my provisional findings, but they haven't persuaded me to reach a different outcome. And I maintain that my provisional findings produce a fair and reasonable conclusion to this particular complaint.

I've considered ARAG's comments around what they feel Mr J could have done in this situation with the benefit of hindsight – and I agree there are other options he may have been able to use. But having considered Mr J's testimony and the circumstances of the complaint, I don't find his actions to have been unreasonable.

ARAG has said Mr J could have walked home and retrieved his spare key, during the call with Mr J and ARAG he states he doesn't know where his spare key is. It was only after the event he was able to locate it. So, I'm satisfied this isn't something he would have considered to be a suitable option at the time. And Mr J explained his keys were locked in

the boot of his car, but the car itself was unlocked. He also had his three-year old child with him. I remain satisfied that his security concerns would be reasonable not to leave the car unattended.

In relation to Mr J sourcing an alternative quote for a locksmith, Mr J specifically raised his concerns about sourcing a locksmith himself on the call with ARAG. And he was then given the details of the company he used from ARAG during the call with them. So, I think it was reasonable for him to use these details and place an element of trust into using their services.

What was the impact

Ultimately, we do not consider a complaint on the basis of how big or small a business's error was – but rather what the impact of that error was. If ARAG had recovered Mr J's vehicle to his home address, he would have been left with options of how best to access his car. As this didn't happen, I remain satisfied that Mr J's incurred costs were the result of ARAG providing incorrect information.

I also think Mr J suffered distress and inconvenience as a result of this matter. He had to spend time and effort to resolve this complaint. So, I think ARAG should pay Mr J £100 compensation for the distress and inconvenience caused.

I'm satisfied this sum is in line with similar awards this Service would make and reflects the impact ARAG's actions had on Mr J. And I find that awarding it results in a fair and reasonable conclusion to this particular complaint.

My final decision

For the reasons I've given, my final decision is that I uphold this complaint. I direct ARAG Legal Expenses Insurance Company Limited to:

- Refund Mr J the £504 invoice cost he paid, plus 8% simple interest, from the date Mr J made this payment until the refund is paid; and
- Pay £100 for distress and inconvenience caused.

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

Stephen Howard

Ombudsman