

The complaint

Mr D made a claim on his ARAG Legal Expenses Insurance Company Limited ('ARAG') legal expenses insurance policy for cover to bring a claim in relation to land he said his neighbour stole and damage to his property.

Mr D says ARAG treated him unfairly by not progressing his claim.

What happened

Mr D made a claim on his ARAG legal expenses insurance policy for cover to bring a claim in relation to land he said his neighbour stole by moving the boundary fence and causing damage to his garage.

ARAG asked Mr D for further information to establish whether his claim was capable of cover. In particular they directed him to claim on his building's insurance policy first in respect of the damage to his garage and asked for other evidence to establish where the boundary between the properties was to understand whether and how much of a trespass there had been.

Mr D provided some responses to ARAG but not the information they requested. ARAG concluded that they didn't have enough information to assess whether his claim fell under the terms of the policy and therefore concluded they couldn't do much more to assist Mr D without him supplying further details. In doing so they acknowledged a very short delay in replying to Mr D outside their response times of 2 days and apologised for this.

Unhappy, Mr D complained to the Financial Ombudsman Service. Our investigator considered his complaint and concluded it should not be upheld. Mr D does not agree so the matter has been passed to me to determine.

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 won't be upholding Mr D's complaint. I'll explain why.

The starting point is the policy terms. They provide cover to Mr D for trespass and property damage as long as there are reasonable prospects of establishing that he has the legal ownership or right to the physical property that is the subject of the dispute.

Mr D claims he acquired the property he feels has been subject to trespass by way of adverse possession. He says he obtained advice from a Solicitor in respect of this and paid for a legal opinion. He has not however supplied anything to ARAG to support his claim such as a letter setting out the advice given to him, photographs of the land in question showing where the fence was placed before and after it was removed by his neighbour, nor evidence of the position of the fencing going back at least 10 years prior to it being removed.

Equally Mr D hasn't provided the title deeds to his property showing whether the boundary

line was intended to be. Without any evidence to support Mr D's claim has reasonable prospects of success, I'm satisfied that ARAG were right to decline it. They had asked for various items and Mr D had the opportunity to explain his case and discuss what more he might have been able to provide ARAG with to help establish he was entitled to the land in question by adverse possession and that a trespass had taken place. From the correspondence I've seen between Mr D and ARAG I'm not satisfied that he provided enough information to enable them to do this, nor did he engage constructively with them to seek advice about what else he might have been able to supply to support his claim. From what I've seen Mr D's responses were short and didn't lead to any meaningful dialogue. I can also see that ARAG tried to discuss matters with him by telephone but this didn't lead to a fruitful discussion as Mr D was otherwise engaged. As such ARAG asked for further information by email.

Mr D was also asked to make a claim on his buildings insurance policy for the property damage aspect of his claim. That's because the legal expenses insurance policy doesn't cover any claims that might be covered by any other insurances. From the correspondence I've seen Mr D said he had not obtained quotations for repair in relation to this but I'm unclear about whether he made a claim on his buildings insurance policy at all. He did however say his insurer didn't cover damages that were consequent to trespass. But I can't see that he provided a letter of decline from his building's insurer as requested by ARAG in respect of this at all.

Given the information requested and Mr D's responses to this, I'm not satisfied that ARAG did anything wrong. If Mr D is prepared to supply ARAG with enough information to help them establish whether his claim is capable of cover then I would expect them to reconsider things but as matters stand, I can't say that Mr D was treated unfairly.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 31 March 2025.

Lale Hussein-Venn
Ombudsman