

## The complaint

S, a charity, complains ARAG Legal Expenses Insurance Company Limited turned down a claim it made on its commercial legal expenses insurance policy.

## What happened

S is a charity which offers sports coaching. Following historic allegations made against two of its coaches, disciplinary proceedings were brought by its governing body. S sought assistance with the costs associated with those proceedings from its policy. ARAG turned down the claim as it said the 'date of occurrence' was before the policy started.

A complaint about that decision has already been considered by our service. Our investigator said, based on the definition of 'date of occurrence' that applied to disciplinary hearings, this had taken place within the policy period. And ARAG had been notified of the claim within 180 days of that as required by the policy. He said ARAG should cover the costs S incurred in defending the disciplinary proceedings and in addition pay £500 compensation in recognition of the inconvenience S was caused.

ARAG agreed to his outcome (and I understand the compensation has been paid). However, it subsequently declined the claim for a different reason. It said an endorsement had been added to the policy in 2016 which replaced the definition of 'Insured Person' in the policy with "*owners, directors, trustees and committee members*". As coaches fell outside of that definition the claim wasn't covered. It accepted that hadn't previously been considered and agreed to pay a further £500 in recognition of the inconvenience S was caused.

Our investigator noted the endorsement had been added by a broker who ARAG said had been operating under an agency agreement with it. He thought ARAG would be responsible for their actions. And he thought under the rules which applied to a group policy like this ARAG was required to provide appropriate information about the policy to its customer and request they pass it on to each policyholder.

In this case the customer was the governing body for S's sport. He was satisfied information had been provided to them about the endorsement but didn't think a request for this to be passed on to the policyholders had been made. And it wasn't something S was aware of. He didn't think it was fair of ARAG to use the definition of insured person the endorsement contained when considering S's claim. He said it should be reconsidered in line with the remaining policy terms. He thought the further £500 ARAG had offered for the inconvenience it caused was fair.

S accepted his outcome. ARAG asked for more time to respond but didn't provide any comments by the agreed deadline. Our investigator told ARAG he'd move the case for review by an Ombudsman and gave a further deadline for any comments to be provided. ARAG didn't provide any further points and said it would await the outcome of the Ombudsman's review. 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 understand S's policy is a group one which covers around 1,200 clubs and it's those clubs who are listed as the policyholders in the schedule. It appears the policy is taken out on their behalf by the sport's governing body. The insured events within the policy include 'Investigation and disciplinary hearings representation' which covers *"Costs and expenses to represent the insured person's legal rights throughout a formal investigation or disciplinary hearing conducted by any business association, professional or regulatory body"*.

I don't think it's disputed that could potentially cover the costs S incurred in relation to the disciplinary proceedings which were brought against its coaches. And the question as to whether the 'date of occurrence' fell within the relevant policy period was resolved as part of the previous complaint to our service. The issue is whether the coaches fall within the definition of 'insured person'.

The policy itself contains a definition of 'insured person' which is:

*"(a) You and the directors, partners, managers, employees and any other individuals declared to us by you.*

*(b) A person contracted to work for you who is in other respects insured by you on the same basis as your employees, and performs work under your supervision and direction."*

I think it's accepted S's coaches would fall within that definition. The issue is ARAG says an endorsement was added to the policy with effect from March 2016 which replaced that wording with a different definition of insured person. That's *"Owners, Directors, Trustees and Committee Members"*. And it seems clear the coaches wouldn't fall within that definition.

S has argued that definition doesn't apply to its policy. However, I understand it was put in place following a request from the governing body of its sport in March 2016. I've seen email chains from the time and subsequently which support the fact it was included. But I don't think that's something I need to reach a finding on because even if the endorsement does apply I'm not satisfied it's fair of ARAG to rely on it in the circumstances of this case. I say that because:

- While this was a group policy the relevant rules say a firm that sells a group policy *"should provide appropriate information to the customer to pass on to other policyholders. It should tell the customer that he should give the information to each policyholder"*. ARAG told us the policy was sold by a firm with which it had an agency relationship. And it hasn't disputed it was responsible for the actions of that firm.
- I haven't seen evidence to show ARAG told the governing body of S's sport to provide information about the change to it or other policyholders. And the governing body says it was *"a sport national governing body rather than an insurer or insurance broker, so we rely on any details or queries related to policy specifics being dealt with directly by our brokers"*.
- ARAG was in any case responsible for producing appropriate information about the policy which I think would reasonably include information about the main benefits,

exclusions, limitations, conditions and its duration. I've seen copies of the policy schedules ARAG produced from 2016 onwards. They include a section headed 'Endorsements' and don't contain any information about the change to the definition of an 'insured person' (though the 2016 schedule does reference a separate endorsement relating to the definition of an employment dispute). So even if ARAG had asked the sport's governing body to provide that information to policyholders it wouldn't have made them aware of the change to the definition of an 'insured person'.

- Our investigator explained in his view why he didn't feel it was fair of ARAG to rely on the exclusion (and did so using broadly the arguments I've set out). ARAG asked for more time to respond but didn't then provide any comments. So there are no counterpoints from it to the arguments already advanced as to why it can't rely on the exclusion.
- ARAG accepted the outcome our investigator reached on the previous complaint. And at that time the outcome wasn't to reconsider the claim but to indemnify S for the legal costs it had incurred in defending the disciplinary proceedings (plus interest). It would have been open to ARAG to raise concerns about the definition of 'insured person' at that time but it didn't do that; it accepted that outcome and said "*I can confirm we are able to agree to the outcome as suggested: to assist with costs incurred in relation to the disciplinary hearing matter only*". It only raised the issue of the insured event three months later and following a full review of the matter which wasn't something it said it would be doing when it agreed to the outcome our investigator reached.

Taking all of that into account I'm not persuaded that ARAG can now fairly rely on the endorsement definition of 'insured person' to decline the claim S made.

### **Putting things right**

ARAG will need to reconsider the claim in line with the remaining policy terms. If cover is available it will need to reimburse the reasonable and necessary legal costs S incurred in defending the disciplinary proceedings. It will also need to pay interest at 8% simple on costs relating to those proceedings S has already paid from the date of payment until the date of settlement.

I also agree ARAG should pay £500 compensation to S to recognise the additional inconvenience it was caused by its claim being incorrectly declined for a second time (if it hasn't already done so).

### **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 S to accept or reject my decision before 2 April 2025.

James Park  
**Ombudsman**