

The complaint

Mr S complains about the handling of a claim made on a legal expenses insurance policy he held with ARAG Legal Expenses Insurance Company Limited (ARAG).

What happened

Mr S had a long running legal dispute with a neighbour, and his legal expenses were being covered by a legal expenses insurance policy provided by ARAG. The details of the dispute, or the legal proceedings aren't relevant to my decision here.

In 2021, a dispute had arisen about costs submitted by solicitors representing Mr S, which indicated that the £50,000 policy indemnity limit was close to being exhausted. As Mr S disputed the level of costs being charged, ARAG agreed that a costs draftsman would assess these to establish whether they were reasonable. This would enable it to confirm how much of the indemnity limit remained to cover further legal expenses.

Throughout the period I'm addressing here, Mr S was overseas and unable to return to the UK due to Covid-19 related travel restrictions. This meant the majority of the contact was between ARAG and Mr S' adult son.

On 22 April 2021, a hearing was held in relation to Mr S legal claim. The judge made an order that, among other things, by 4pm on 6 May 2021, Mr S had to provide a number of documents to the third party's solicitors, and pay his share of the costs of a single joint expert (SJE) to assess matters related to the case.

Mr S' claim was ultimately struck out, as the judge agreed with the third party's solicitors that the documents hadn't been provided and the fee hadn't been paid by the deadline.

Having exhausted the various avenues to appeal the decision to strike out the claim, Mr S complained to ARAG about the failure to pay the fee. He said ARAG had enough time to pay the fee, and if it had done so, he believed his case would have been successful.

When ARAG rejected his complaint, he referred it to our service. Our investigator didn't think ARAG had done anything wrong. Mr S disagreed and asked for 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.

Mr S has provided a number of documents to our service, including the testimony of his son in relation to his dealings with ARAG. I don't intend to refer to each of these individually, or address every point made by Mr S. I have carefully considered all of this evidence, but will focus on matters which I need to refer to in order to make my decision about whether ARAG did anything wrong.

Mr S has raised concerns about the assistance offered by ARAG during the course of the claim. Mr S' concerns would seem to relate to a period when solicitors weren't acting for him.

I haven't seen anything to suggest ARAG could have done more to assist Mr S during this period. It should be noted that ARAG is Mr S' insurer, not a legal representative so it isn't in a position to give legal advice or conduct the case for him.

While the primary aspect of Mr S' complaint is around the payment of the fee for the SJE (and what happened after this was paid after the deadline), there is a link to the indemnity limit. Mr S referred to this in correspondence with ARAG about the complaint.

I know Mr S is unhappy about the costs submitted to ARAG by solicitors who previously represented him and the impact this has had on the indemnity available on the policy. In short, the costs submitted meant that a large part of the £50,000 policy limit had been exhausted, leaving a small amount for further costs which were inevitably going to be incurred as a result of the ongoing proceedings. However, I'm also aware that ARAG was aware of Mr S' concerns and asked for a review of the costs claimed by the solicitors from a draftsman. Another reason for this was so that ARAG could accurately establish how much of the policy limit remained available for further costs.

The costs draftsman concluded that the costs submitted had been reasonable. I'm therefore satisfied it was fair for ARAG to accept this, as it isn't an expert on costs and it can reasonably rely on the conclusions reached by the draftsman. Mr S is unhappy with the conduct of the solicitors during the time they represented him, but our service's jurisdiction is limited to the actions of ARAG. We have no power to examine the actions of the solicitors in the way the case was conducted.

The costs draftsman was still completing their assessment of the costs during the critical period in April and May 2021 when Mr S was ordered to pay the SJE fee. This meant that during that period, ARAG was unsure how much (if anything) of the policy indemnity limit remained. However, it did agree to cover the SJE fee and to pay it directly. The question I need to focus on here is whether it acted promptly on being informed about the fee and the deadline for its payment. If I agreed it didn't, I'd then consider what impact this had on Mr S, and particularly the legal proceedings.

The court order followed a hearing on 22 April 2021, and the written order was dated 29 April 2021. This said the SJE fee had to be paid by 4pm on 6 May 2021. From the evidence available to me, the first time ARAG was made aware of the fee and the deadline was on 6 May 2021. ARAG's notes show a phone call was received from Mr S' son, and an email was sent by him at 2.51pm, attaching a copy of the order. I'm aware Mr S refers to a number of phone calls made by his son, but none of the notes from ARAG's file or evidence from Mr S suggests he made ARAG aware of the SJE fee and the deadline before 6 May. It seems to be agreed ARAG asked Mr S' son for the account details to be provided so that payment could be made. This request, from the evidence available to me, was made in a phone call before he sent the email at 2.51pm. When Mr S' son forwarded the order detailing the deadline, he didn't include the bank details. There appears to be no dispute that Mr S' son didn't send the required account details until 4.32pm (ie after the deadline for payment to be made). From the evidence I have, it seems Mr S' son was provided the bank details on 4 May.

ARAG's notes suggest there was a discussion with his son about Mr S (or someone acting on his behalf, for example his son) paying the SJE fee himself, to avoid waiting for ARAG to process the payment. Given the limited time available before the stated deadline, and importance of making the payment before the deadline, I think this was a reasonable position to take.

In order to make the payment, ARAG needed to know the account details where the payment needed to be sent. Those weren't provided until half an hour after the deadline had

passed. So it follows it would be unreasonable to say it could (or should) have paid the SJE fee before the 4pm deadline. Furthermore, on 7 May, despite saying it would make the payment, Mr S' advice was not to make the payment, as an email had been sent to the court asking whether a payment plan could be agreed. On 11 May, ARAG was asked to make the payment, which it duly did. However, the court subsequently struck out the claim.

I consider that ARAG acted in accordance with the urgency of the request. It indicated it would look to process the payment before the deadline if the required information (the bank account details) was provided in time. Unfortunately, this didn't happen. It agreed to make the payment even though, at that stage, it didn't know how much (if any) of the £50,000 policy indemnity limit remained.

On that basis, I can't conclude that ARAG's actions meant the fee wasn't paid by the deadline. It agreed to pay the SJE fee before the deadline and I'm satisfied the reason it was unable to do so was because the required bank account details weren't provided before the deadline and then the following day was told not to make the payment.

I don't believe the late payment of the SJE fee was the fault of ARAG, and so I don't need to explore the impact of this further. One point I do think should be noted is that when the third party's solicitors applied to strike out Mr S' claim, it referred not only to the failure to pay the SJE fee before the deadline, but also that the documents which were required to be disclosed hadn't been. The disclosure of the documents wasn't something ARAG was responsible for, and I don't intend to discuss whether the documents had been properly disclosed.

Finally, Mr S asked ARAG to cover £10,000 of costs incurred after the claim was struck out. ARAG noted that the policy terms and conditions didn't provide cover in these circumstances. However, it did make a payment to Mr S of £4,700. This was in excess of the amount remaining on the policy indemnity limit. ARAG recognised the impact on Mr S of having been out of the country for some time, and how this affected his ability to effectively litigate his case. I'm satisfied this was a fair course of action, which likely benefitted Mr S, both because more was paid than remained of the policy indemnity limit and by either making a payment for costs which ordinarily wouldn't be covered, or preventing the need for further submissions or assessments of costs which could be covered.

My final decision

I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 April 2025.

Ben Williams
Ombudsman