

## **The complaint**

Mr and Mrs K complain that when they made a claim on their loss adjuster fees insurance policy, the loss adjuster appointed by ARAG Legal Expenses Insurance Company Limited gave inaccurate information about a claim on their buildings insurance, which led to the claim being declined.

## **What happened**

Mr and Mrs K made a subsidence claim on their commercial property insurance after the tenant who lived in the property informed them of cracks in the front wall. Mr and Mrs K made a claim on their loss adjuster fees insurance and ARAG appointed a loss adjuster (which I'll call T) to assist them in the subsidence claim.

A site visit was arranged where Mr K attended along with T and the tenant. The buildings insurer's loss adjuster attended by video link. There was correspondence between T and the loss adjuster acting for the buildings insurer after the meeting.

The claim on the commercial property insurance was declined. Mr K complained that this was due to T saying the cracks had first been noted in 2016, which was before the commercial property insurance policy had started. He said the correct date was 2018 and, if that date had been given, the claim would have been covered.

In response to the complaint, T said:

- the date had been given by the tenant, who said they had first seen cracks in the property in 2016, and this was confirmed by the buildings insurer's loss adjuster.
- it had not acted in appropriately and in any event, the insurer's decision was not based solely on that information about the date.

When Mr and Mrs K referred the complaint to this Service, our investigator said the evidence didn't show the subsidence claim had been declined as a result of inaccurate information being provided by T. Mr K provided further comments, including that the tenants had confirmed the correct date was 2018, not 2016, but the investigator didn't change their view.

## **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 industry rules and guidance say insurers must deal with claims promptly and fairly; support a policyholder to make a claim; and not unreasonably reject a claim.

The policy terms say ARAG will pay a representative to assist Mr and Mrs K with the claim on their commercial property insurance, to include the costs of a site visit, preparing the claim and negotiating with the insurers. ARAG did this, appointing T to deal with the subsidence claim on Mr and Mrs K's behalf.

T was assisting Mr and Mrs K, but was appointed by ARAG and there was no contract between Mr and Mrs K and T. So I'm satisfied ARAG is responsible for T's actions.

If T had provided the wrong information and this had led to the subsidence claim being declined, it might be reasonable for ARAG to take responsibility for any loss or harm caused by that. But I'm not persuaded the evidence shows the claim was declined because T gave the wrong date.

The evidence includes email correspondence from the loss adjuster acting for the buildings insurer where they say it was the tenant that gave the date of the damage first being noticed as 2016. Indeed, they said they sought clarification of the start date of the policy "*specifically due to the tenants comment that the damage was first noted in 2016...*" and they said this comment was made in the presence of them, Mr K and T.

There doesn't appear to be any doubt in their mind about what was said. I appreciate Mr K disputes this, and has provided further comments made by the tenant at a later date, but I don't think that is enough to outweigh the other evidence from the time.

The evidence from the loss adjuster is that the decision to decline the subsidence claim was based on their own recollections and conversations with both Mr K and the tenant. And the decision to decline the claim referred to other issues, not simply the 2016 date. The evidence doesn't indicate the decision was based on misinformation from T.

This complaint only concerns the actions of T. I can't comment on the actions of the buildings insurer or say whether the decision to decline the subsidence claim was fair. Our investigator explained to Mr K that he could complain about that decision separately. As far as this complaint is concerned, I don't consider Mr and Mrs K have been caused any loss as a result of inaccurate information being provided by T.

### **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 Mr and Mrs K to accept or reject my decision before 11 March 2025.

Peter Whiteley  
**Ombudsman**