

The complaint

Ms R and Mr R complain that ARAG Legal Expenses Insurance Company Limited unfairly declined a claim under their legal expenses insurance policy.

Where I refer to ARAG, this includes the actions of its agents and claims handlers for which it takes responsibility.

Whilst this is a joint policy, I'm aware this is Ms R's claim so I'll refer only to her in my decision for ease of reading.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In the course of her profession, Ms R entered into a contract with a third party to provide services. She subsequently believed the contract had been breached, so she made a claim to ARAG for the expenses to pursue legal action.

ARAG considered the claim under the Contract Dispute head of cover. But it said the claim Ms R wanted to pursue fell outside of the remit of the policy because she hadn't entered into the contract in her personal capacity – rather, it was a business agreement. It also said cover didn't extend to contracts for providing services.

Ms R didn't agree. She said she'd entered into the contract in her personal name. She asked ARAG to reconsider the claim under the Employment Disputes head of cover.

ARAG did so, but it declined the claim on the basis that the policy only covers disputes relating to a contract of employment – and Ms R didn't have one.

Ms R didn't think this was fair or in line with the spirit of the policy, so she raised a complaint. She provided case law involving someone in her profession with a similar contract to hers where the Judge ruled that a contract of services is a contract of employment.

ARAG maintained its position on the claim. But it acknowledged it had caused some delays and offered £50 compensation to put things right.

Ms R brought her complaint about the decline of her claim to our Service. But our Investigator didn't uphold it. She was satisfied that ARAG's decision was in line with the policy terms and it hadn't acted unfairly.

As Ms R didn't agree, the complaint has been passed to me to decide.

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'd like to reassure Ms R that whilst I may have condensed what she's told us in far less detail and in my own words, I've read and considered all her submissions. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail she'd like, in order to reach my decision. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

Ms R holds a legal expenses insurance policy, underwritten by ARAG, which is designed to cover her and her family in their personal capacity. There are insurance products on the market which are designed to cover businesses and business activities. But the policy in place is intended to cover an individual and, whilst it won't cover every eventuality, it's designed to cover common legal disputes that may arise for an individual.

Ms R is in dispute with a third party regarding a contract for services which she provides to them. I've considered the level of cover available to her under her policy, but I agree with ARAG that her claim falls outside of its remit. I'll explain why.

The Contract Disputes section of cover set out in the policy terms and conditions say:

"Covered:

A dispute arising from an agreement or an alleged agreement which you have entered into in a personal capacity for:

- *Buying or hiring in goods or services*
- *Selling goods*
- *Renting your property as a tenant*
- *Buying or selling your property."*

I'm not satisfied Ms R's claim falls under this section of cover for several reasons.

Firstly, the contract in dispute needs to have been entered into in a personal capacity. I would consider this to be where Ms R is acting outside of her business, trade, or profession – which isn't the case here. Although I appreciate the contract is in Ms R's personal name and I note there is no policy definition for "personal capacity".

But even if I was to accept that Ms R entered into this contract in her personal capacity – which, to be clear, I don't – she doesn't meet the test for the remaining terms of this section. This is because the contract in question isn't in relation to her either 1) buying or hiring goods or services, 2) selling goods, 3) renting her property as a tenant, or 4) buying or selling her property. The contract is for the sale / hire of Ms R's services – which isn't something that's listed as part of the cover.

The Employment Disputes section of cover says:

"Covered:

A dispute relating to your contract of employment."

Ms R's claim doesn't fall under this section because, on the face of it, she doesn't have a contract of employment. The contract in place specifically says it doesn't create an employee / employer relationship. So I don't think it's unreasonable for ARAG to conclude that there isn't a contract of employment in place.

I appreciate that in certain circumstances, a contract for services can amount to a contract of employment which Ms R has pointed out. But my role isn't to decide whether Ms R's contract

for services does amount to an employment contract. That's a legal question that our Service can't answer.

My role is to determine whether ARAG acted fairly by declining this claim based on the information it had at the time. As the onus is on Ms R to show that she has a valid claim under the policy, and she hasn't shown that her specific contract for services amounts to a contract of employment, it's not unreasonable or unfair that ARAG concluded that the claim didn't meet the policy terms.

If Ms R wishes to dispute this further, the onus is on her to get a reasoned legal opinion, in writing, from a suitably qualified lawyer at her own cost. And if this supports her position, she should provide it to ARAG in the first instance for it to reconsider her claim.

But on the information currently available, I can't fairly conclude that ARAG has acted incorrectly or unfairly by declining this claim under the Contract Disputes and Employment Disputes sections of the policy for the reasons I've explained above. And I'm not persuaded this is acting outside of the spirit of the policy when, as I've mentioned, the policy is not designed to cover business activities.

My final decision

For the reasons I've explained, I don't uphold this complaint.

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

Sheryl Sibley
Ombudsman