

The complaint

Mr B is unhappy with what ARAG Legal Expenses Insurance Company Limited did after he made a claim on his legal expenses insurance policy.

What happened

Mr B engaged a contractor to carry out work at his property. He was unhappy with the work carried out and the failure of the contractor to rectify the issues. He sought assistance from his legal expenses policy in August 2023. Mr B subsequently complained to ARAG about its decision to turn down the claim on the basis it didn't have reasonable prospects of success. ARAG issued a final response to that complaint in December 2023. That wasn't referred to us within six months of the response being sent and so isn't something I'm considering.

Mr B contacted ARAG again at the end of January 2024 and said he had new information which he thought would make a difference to the prospects assessment. In particular a claim letter issued against him by the contractor referenced the involvement of its insurers. He thought that would impact the assessment as it related to prospects of recovery which had previously been considered unfavourable. ARAG asked the panel firm to reassess the claim.

In June 2024 the panel firm said it didn't think the claim would be covered by the third party insurer (and explained why that was). And while the most recent accounts lodged by the contractor did show an improvement in their financial position their net assets were still considerably less than the value of Mr B's claim. The panel firm didn't change its previous advice on the claim's prospects of success.

Our investigator thought it was fair for ARAG to rely on that opinion and maintain its decision to decline the claim. But he thought there had been a failure by ARAG to respond to emails Mr B sent while the matter was being reviewed or to chase the panel firm to complete that review. He said ARAG should pay Mr B £100 in recognition of the stress and inconvenience that caused him.

ARAG agreed with his view. Mr B didn't agree. In summary he said.

- The information provided about the contractor's insurance did significantly improve the prospects of success of his case and that hadn't been adequately considered in the updated assessment provided by the panel firm. He explained why he didn't think that assessment should be relied on. He said ARAG should have ensured the panel firm considered all relevant evidence including the new information he'd provided.
- There was a conflict of interest between ARAG and the panel firm as they were both owned by the same company. This might compromise the impartiality of the legal opinion provided. Despite that ARAG hadn't offered an alternative panel solicitor or suggested obtaining a second legal opinion. He said his claim had been reviewed by an independent solicitor who believed it had a strong chance of success and did have positive prospects of recovery.

- There had been multiple instance of poor communication and delay by ARAG that had caused him significant stress and inconvenience at a point he was already dealing with the underlying legal dispute. And the lack of legal representation for his case had left him in a difficult position as he prepared for the court case. The proposed compensation wasn't sufficient to recognise the impact on him of what ARAG got wrong.
- Subsequently Mr B told us he'd been successful in achieving an out of court settlement but that as a litigant in person he'd had to bear financial risk and been put to additional time and trouble that could have been avoided if ARAG had covered his claim.

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've looked first at the terms and conditions of Mr B's policy. It doesn't appear to be in dispute his claim is one the policy could, in principle, cover. But it's a condition for cover to be provided that *"reasonable prospects exist for the duration of the claim"*. And the policy defines that as *"for civil cases, the prospects that you will recover losses or damages (or obtain any other legal remedy that we have agreed to, including an enforcement of judgement), make a successful defence or make a successful appeal or defence of an appeal must be at least 51%"*.

As an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case ARAG did refer Mr B's claim to a panel firm for assessment. They advised in September 2023 the claim didn't have prospects of success. That was because Mr B was unlikely to recover damages from the contractor he was claiming against. The issues Mr B raised with ARAG about that assessment aren't something I'm considering in this decision because they weren't referred to us in time.

However, when Mr B provided ARAG with further information about this claim in January 2024 it rightly asked the panel firm to review that to see if it made a difference to its previous assessment. That firm concluded in June it didn't. I appreciate Mr B disagrees with that revised assessment and I note the points he's made about this. But I don't think there was any reason ARAG shouldn't have relied on it. The assessment was produced by a paralegal with experience in the relevant area of law who was supervised by a qualified solicitor. And it addresses the further points Mr B raised (in particular as they relate to the involvement of a third party insurer) and gives a clear rationale as to why they don't impact the position on prospects of recovery.

Mr B says ARAG shouldn't have relied on the assessment from the panel firm because both it and the firm are part of the same group. I appreciate they are but I don't think that means ARAG shouldn't have relied on the revised assessment (or that it needed to seek a second opinion). Regardless of the overall ownership structure the lawyers involved in the case are independent and required to act in line with their professional duties. I haven't seen anything which would indicate they haven't done that in this case. I don't think there were further

questions ARAG should reasonably have asked about the assessment and I think it was entitled to rely on it in maintaining its decision to decline cover for Mr B's claim.

Mr B says an independent solicitor disagreed with the position the panel firm reached. However, I haven't seen evidence he's provided that opinion to ARAG. If he does so I'd expect it to review matters. But in the absence of a contrary legal opinion to that of the panel firm I don't consider there was further action it should have taken in relation to this claim.

I've gone on to consider ARAG's handling of the claim. I don't think it's in dispute there were failings here. It accepted our investigator's view in which he found it didn't provide a response to some emails Mr B sent and could have done more to chase up progress with the panel firm. I accept Mr B will have been caused some avoidable distress and inconvenience as a result of what ARAG got wrong.

I also appreciate that will have been exacerbated because at the same time he was having to progress the underlying legal claim. But the fact Mr B had to do that (and was without legal representation) isn't something which results from what ARAG got wrong. For the reasons I've already explained it was entitled to rely on the revised prospects assessment the panel firm provided. So even if further chasing by ARAG had let to that being produced earlier the position on legal representation wouldn't have changed.

I'm also aware Mr B made a separate complaint to the panel firm which has acknowledged its own failings in progressing the revised assessment and awarded Mr B £200 in recognition of the impact of that on him. I think it's reasonable to take that award into account when considering what more ARAG needs to do to remedy the distress and inconvenience Mr B was caused by what it got wrong. And having done so I think the £100 our investigator has already recommended does enough to put things right here.

My final decision

I've decided to uphold this complaint. ARAG Legal Expenses Insurance Company Limited will need to pay Mr B £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2025.

James Park
Ombudsman