

The complaint

Mr and Mrs N are unhappy with how ARAG Legal Expenses Insurance Company Limited are dealing with a claim they made under a legal expenses insurance policy.

What happened

In summary, Mr and Mrs N are in dispute with a neighbour regarding the construction of an extension. They made a claim under a legal expenses policy to assist with the costs of legal action.

ARAG initially appointed a panel solicitor (S1) which thought the case had prospects of success, a requirement for cover under the policy. Unfortunately, Mr and Mrs N were unhappy with the actions of S1, and it also later declined to act further for them. ARAG reassigned the case to another firm of panel solicitors S2.

S2 didn't think the case had prospects of success and let ARAG know. Mr and Mrs N were understandably disappointed with this opinion. Given the conflicting opinion ARAG agreed to fund a barrister's opinion so that prospects of success could be determined one way or the other. In the meantime, S2 indicated it would no longer be prepared to act for Mr and Mrs N or prepare instructions for the barrister. In order to enable policy coverage to be confirmed ARAG agreed to fund reasonable costs of a solicitor of Mr and Mrs N's choosing to prepare the barrister's instructions.

Mr and Mrs N are unhappy ARAG have not agreed to pay the costs their proposed solicitor has requested. They are unhappy the matter has been delayed further and that the matter hasn't been prioritised as they would have expected given its history.

Mr and Mrs N complained to ARAG however it said it didn't think it had done anything wrong. It said Mr and Mrs N only agreed to the terms on which the barrister's instructions would be made on the 3 October 2024, so it wasn't able to take any action before that date.

It said it was negotiating with Mr and Mrs N's choice of solicitor regarding their requested fee which it was entitled to do. It reminded Mr and Mrs N it had only agreed to pay reasonable costs for the barrister's instruction, and it didn't think the fee proposal the solicitor had initially made was reasonable. ARAG apologised to Mr and Mrs N for making repeated requests for their solicitors' details.

Mr and Mrs N brought their complaint to this service. Our Investigator looked into it and explained to Mr and Mrs N that she didn't think ARAG had acted unfairly. She said it was fair for it to restrict what it pays to non panel solicitors, and it had already offered to pay above the rate set out in the policy. Mr and Mrs N disagreed and asked for the case to be passed to an Ombudsman. In doing so they reiterated the history of the complaint and why they thought ARAG was acting unfairly.

The case 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.

Having done so, I agree with the conclusions reached by the Investigator for the following reasons:

- I'm aware of the background of this case and the reasons why it has become necessary for a non panel solicitor firm to be appointed to prepare instructions for a barrister's opinion. However, this history does not influence the decision I need to make here.
- An agreement was made that ARAG would pay reasonable and necessary costs to Mr and Mrs N's choice of solicitor firm to prepare instructions for the barristers' opinion to be obtained. I don't think this means that ARAG should simply pay whatever costs that solicitor firm asks for. This isn't an unusual proposal, and costs are expected to be charged at the appropriate level for the work undertaken. I realise Mr and Mrs N didn't fully appreciate what this meant however I don't think this was due to a failing by ARAG.
- ARAG has proposed either a fixed fee agreement or costs to be paid at the court guideline rate for a grade B solicitor. Given the solicitor firm is only required to put the instructions together I think this is a reasonable proposal. It recognises while this is work that could normally be undertaken by a lower fee earner, some experience would be necessary, in this case, to ensure the instructions are prepared appropriately. If ultimately Mr and Mrs N's choice of solicitor firm refuses to work at the rates ARAG has proposed then it would be for Mr and Mrs N to decide if they wish to arrange for another firm of solicitors to prepare the instruction or, they agree to top up the fees to the requested level.
- I appreciate this matter is very important to Mr and Mrs N and why they want matters to be acted on with urgency. However, having reviewed the timeframe related to this complaint I'm satisfied ARAG has dealt with the matter in a timely way and it has done its best to fulfil Mr and Mrs N's expectations in terms of the service level it provides to them.
- ARAG would have been unable to take any action until Mr and Mrs N agreed to the basis on which the barrister's instruction would be made and I'm satisfied once that happened ARAG contacted the chosen solicitor firm. Fee negotiations can take a while, and this is a normal process. I don't think ARAG acted unfairly or unreasonably here by entering those negotiations.
- ARAG has apologised for repeatedly requesting the details of Mr and Mrs N's chosen solicitor. It has also acknowledged there was confusion about the payment of the barrister's fee, but it rectified this quickly. I think this is sufficient, while I understand this would have caused a degree of frustration to Mr and Mrs N I don't think a monetary award of compensation is required

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

My final decision

My final decision is that I do not uphold Mr and Mrs N's complaint against ARAG Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 2 September 2025.

Alison Gore
Ombudsman