

The complaint

Mr S's complaint is about the rejection of a claim made under the legal expenses section of his landlord insurance policy with ARAG Legal Expenses Insurance Company Limited.

What happened

Mr S took out the policy with ARAG in March 2023. In March 2024, Mr S made a claim under the policy, as he wanted to take possession proceedings against his tenant. Mr S says he had visited the property and found the tenant had breached the tenancy agreement by making modifications to the property and using it for business purposes, among other things.

ARAG said the policy excludes claims where the date of occurrence of the event giving rise to the claim occurs before the start of the insurance. ARAG said the evidence Mr S had provided showed that he had already been in dispute with the tenant before the policy started, as the tenant was in rent arrears, and as such this claim is excluded from cover.

ARAG had previously rejected two other claims relating to the rent arrears on the same basis.

Mr S was unhappy with this. He said there had been previous rent arrears but they had been cleared before he took out the policy with ARAG and, in any case, the possession proceedings were not related to the rent arrears but because of other breaches of the tenancy agreement.

ARAG did not change its position on the claim but did acknowledge there had been some delays in responding to Mr S's communications. It apologised and offered £100 compensation for this.

Mr S remained unhappy with this and referred his complaint to us. He has made a number of points in support of his complaint. I have considered everything he has said and have summarised his main points below:

- He has been left worse off having taken this policy with ARAG
- ARAG caused him immense stress and wasted his time and did not provide him with help when he needed it.
- A rental payment systems error meant that two rental payments made in May 2023 cancelled out the previous ones causing the first event date to move along, causing him disadvantage.
- The policy covers legal expenses for other action but the claim was discredited based solely on rent arrears. He does not want to claim for the rent arrears, only possession of the property.
- Whilst there were serious breaches by the tenant, the condition they had left the property in was not considered.
- The delays caused by the claim's handler resulted in further distress and the time taken has contributed to increased rent arrears.
- The process was complicated, the claims handler was difficult to deal with, and there were delays due to the handler going for training and being on annual leave without

- informing him, which caused him distress and impacted his mental health.
- The £100 compensation offered does not reflect the time and trouble endured in raising the complaint and navigating the process.
- The insurance policy was misleading as it did not mention that the first event is assessed on rent arrears, disregarding any other breaches of the tenancy agreement.

Mr S told us he wants the following redress from ARAG:

1. to be reinstated to a better position for the period of March 2023 - 2024.
2. Refund of the insurance policy premium, amounting to £300.
3. Compensation for his loss of earnings, as he took a week off work to provide substantial evidence in support of the claim and so lost annual leave.
4. Reimbursement for expenses incurred while visiting the property to gather evidence for the insurance claim, including a two-hour drive and producing his own inventory, amounting to £1,000. And,
5. compensation for the harm caused to his mental health and the additional stress of liaising with ARAG and its claims handlers. He puts this at £10,500

One of our Investigators looked into the matter. She said that ARAG did not sell the policy to Mr S, so any issue with the information provided when the policy was sold would be for the seller to answer. The Investigator also said that the rent had been in constant arrears since before the policy was taken out and this was the start of the dispute with the tenant, so ARAG was entitled to reject the claim. The Investigator also thought the £100 compensation offered was reasonable for the delays involved with the claim.

Mr S does not accept the Investigator's assessment. He has made a number of further points in response. Again, I have considered everything he has said and have summarised his main points below:

- The Investigator's tone was not neutral and he does not think it was impartial
- The Investigator missed the point that he was stating what constitutes a first event and if the same event occurs does it not cancel out the first event and move along to become the new first event?
- He wants the policy to be changed so the term is clear at point of sale.
- The investigator listed the tenancy breaches but these were not known to him until he visited the property in 2024. And ARAG has since said he does have a valid claim which was missed.
- He questions if the Investigator has seen the photos of the state of his property after the tenant left. His claim to reinstate the property should be met.
- The delays did not impact his claim but did significantly impact him and the £100 is not sufficient for this which shows she sided with ARAG and did not consider his experience fully.

ARAG has confirmed that its claims department asked Mr S to provide further information so it can consider a claim against the tenant for the damage to his property in late 2024 but it has not received any information.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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's policy with ARAG provides cover for various issues that might arise with the property. This includes the pursuit of rent arrears and repossession proceedings. However, as with all insurance policies, the cover is subject to various terms and conditions. The terms relevant to this claim state as follows:

"We agree to provide the insurance described in this policy for you, in return for payment of the premium and subject to the terms, conditions, exclusions and limitations set out in this policy, provided that ...

2. The date of occurrence of the insured incident is during the period of insurance."

Date of occurrence is defined in the policy as being:

"a) For civil cases ... the date of event that leads to a claim. If there is more than one event arising at different times from the same originating cause, then the date of occurrence is the date of the first of these events. (This is the date the event happened, which may be before the date you first became aware of it.)"

The policy also contains a general exclusion as follows:

"Claims in the first 90 days where the tenancy agreement pre-dates policy

Any disagreement with our tenant when the date of occurrence is within 90 days of the first period of insurance and the tenancy agreement starts before the start of this policy, unless an equivalent legal expenses and Tenant default policy was in force prior to you insuring with us and cover has been maintained continuously between that previous policy ending and this policy starting."

These terms are not uncommon in policies such as this and I do not consider them unfair.

The tenancy agreement did start before the insurance with ARAG and, as I am aware, Mr S has not provided evidence of any previous policy.

Therefore, Mr S is subject to this waiting period of 90 days from the start of the policy for any claims relating to disagreement with the tenant. That would mean that the date of occurrence of any claim Mr S wants to make for a disagreement with the tenant would need to have occurred after early June 2023 to be covered.

The rent schedules provided by Mr S show that his tenant did not pay any rent for January, February, March or April 2023. The tenant made a few payments thereafter but, at no time between January 2023 to February 2024 were the arrears completely cleared, and the payments were not regular.

Mr S refers to payments in May 2023 being incorrectly recorded, which meant the start date of the rent arrears kept getting pushed along, to his detriment. I think he means that the payments made by the tenant in May 2023 should have been attributed to the rent due in May 2023, rather than being put towards the arrears accrued up to then. I do not think it is unreasonable to put the payments that were received against the arrears.

Mr S also suggests that each new event (so each month's missed payment) should cancel out the last, so it becomes a new event. I do not think this is a reasonable interpretation. If

there is more than one event that could give rise to a claim, then the relevant date is when the first event occurred, not when the most recent event occurred.

Given all of this, I am satisfied that there were continuous rent arrears from before and indeed throughout the period of insurance and therefore that the date of occurrence of the rent arrears was before the start of the policy.

Mr S is not, however, claiming for pursuit of the rent arrears or for rent default but for other breaches of the tenancy agreement, so he says this is not relevant. ARAG says it is linked, as it is part of the same originating cause.

I therefore have to now consider whether that is a reasonable application of the exclusion set out above.

The policy term states that if there is more than one event at different times from the same originating cause, then the date of occurrence will be the first of these events.

The term "*originating cause*" is not defined in the policy. I have therefore considered the reasonable interpretation of that term. I think that for two (or more) events to have the same originating cause, they would need to be connected. When considering the interpretation of this term, the court has said there would need to be a "*unifying*" factor.

So there would need to be connection, or unifying factor, between the events that have led to the claim Mr S wants to bring (for possession) and the events that pre-dated the policy (the rent arrears) for this term to apply to exclude Mr S's claim.

Having considered this carefully, I think there are unifying factors between the rent arrears and the claim for possession. They both arise from breaches of the tenancy agreement by the tenant and I do not consider the possession proceedings could stand entirely alone and that the rent arrears are not relevant to that claim.

The fact is there was a dispute with the tenant since before the policy started, as they had breached the terms of the tenancy by not paying all the rent as and when it became due. The possession proceedings could be based on other breaches but I think it is reasonable to consider that it arises from the same originating cause, which is the tenant's breach of the tenancy agreement.

While Mr S did not know the extent of the breaches of tenancy agreement by the tenant until later, I think it is reasonable to conclude that there was an ongoing issue with the tenant before the policy started and on this basis ARAG has not acted unfairly in declining the claim for possession.

Property damage

ARAG has confirmed that it would consider a property damage claim as a separate event. I think that is reasonable. ARAG says that claim could not be pursued until Mr S had possession of the property. If Mr S wants to pursue the property damage claim then he should contact ARAG.

Delays and customer service

I can see this was an extremely stressful period for Mr S. However, having considered everything carefully, I am not persuaded that the main impact on Mr S was due to anything done wrong by ARAG.

I can see Mr S spent time submitting and pursuing his claim, and complaint, but this is part of the process. I have not seen any evidence that ARAG asked for anything that was unnecessary or unreasonable. I do not therefore consider that it is reasonable to make any award against ARAG for the time taken by Mr S (including using annual leave) to visit the property, complete inventories or any other action in relation to this claim.

I also do not think ARAG needs to refund the premium paid for the policy. Mr S says the policy is misleading but I think the terms relied on by ARAG are sufficiently clear. And, as explained by the Investigator, because ARAG didn't sell the policy any issue with the information provided at the sale of the policy cannot be considered against ARAG. Just because claim is not met does not mean the premium should be refunded.

I can see that there were some difficulties speaking to claims-handlers at ARAG, which I accept would have been frustrating. However, I cannot see that they caused any significant delays or impacted the outcome of the claim. Having considered everything carefully, I think the £100 ARAG has already paid is reasonable and in line with our awards.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 August 2025.

Harriet McCarthy
Ombudsman