

The complaint

Ms A complains that ARAG Legal Expenses Insurance Company Limited declined a claim on her legal expenses insurance policy.

What happened

Ms A bought a house in May 2023, which she lived in with her daughter. Some months after moving in, she discovered serious problems with damp and mould in the wet room. She claimed on her home insurance for the cost of putting this right but the claim wasn't covered.

The home insurance includes legal expenses cover and Ms A made a claim on that. She wanted cover to take legal action against the person who had sold the house, the conveyancer who acted for her on the purchase, and the surveyor who had inspected the property and provided a report on its condition.

The legal expenses cover was provided by ARAG from November 2022; before that it had been provided by a different insurer.

ARAG said the claim against the surveyor wasn't covered because the report had been done before its policy started, so Ms A should look to her previous insurer to cover that claim, but the claims against the seller and conveyancer could potentially be covered.

After reviewing things further, ARAG said all three claims had the same originating cause; there was a series of events that started in October 2022. So it said they should be all be dealt with together, and be covered by her previous insurer.

ARAG then said the policy only covers disputes about contracts entered into by someone in a personal capacity, and the contracts wouldn't have been entered into by Ms A in that capacity, because she had bought the property as a trustee of a family trust. So her claims were not covered.

When Ms A referred the complaint to this Service, our investigator said it wasn't fair to decline the claim, as Ms A had entered into the contracts in her own name, and she couldn't reasonably have known about the issue until after this policy started. The investigator said the claims should be covered by ARAG, not the previous insurer.

ARAG had acknowledged some delays in dealing with the claim and offered £150 compensation in respect of that, which the investigator said was fair.

ARAG disagreed with the investigator's view.

After further correspondence, ARAG accepted that it should be responsible for the claims, rather than the previous insurer. But it maintains that there's no cover because Ms A was acting in her capacity as a trustee, and the relevant policy term only covers contracts entered into in a personal capacity, so does not extend to someone acting as a trustee.

As no agreement has been reached, I need to make a 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.

In making my decision I need to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time and then decide what's fair and reasonable in all the circumstances of the case.

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.

ARAG has accepted that it is responsible for dealing with the claims, not the previous insurer, so I don't need to deal with that. What I need to determine is whether it's fair to say Ms A is not covered because she didn't enter into the contracts in her personal capacity.

The policy includes cover for contract disputes as follows

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

- a. Buying or hiring in goods or services*
- b. Selling goods*
- c. Buying or selling your principle home."*

ARAG says Ms A isn't covered because she did not enter into contracts in a personal capacity – she entered into the contracts in her capacity as a trustee of the family trust.

It seems to me she entered into contracts with the surveyor and the conveyancer in her personal capacity; she was contracting with them to carry out work for her.

Even if she didn't act in a personal capacity, I don't think it's fair not to cover those claims, and the claim against the seller. I say that for the following reasons:

- I appreciate Ms A bought the house in her capacity as a trustee of the family trust. But ARAG was advised that Ms A was acting as both the trustee of the trust and as a beneficiary -
"During the conveyancing process the insured was acting as a trustee for the benefit of the beneficiaries of the trust (in this case herself).
- ARAG was also advised that the trust is not a separate legal entity in the same way a company or limited liability partnership is.
- So Ms A was the beneficiary of the trust, and the purpose of the transaction was to provide a home for her. The property may have been bought through the trust, but it was for her benefit. She is the owner and beneficiary, and the property is her home.
- The policy covers her for a contract dispute relating to buying or selling her home, and that is the situation here.
- The policy term might not, strictly speaking, cover her if she was not acting in her personal capacity but I think it would be unfair to apply that term strictly in these circumstances. The trust is not a separate legal entity. She is the owner of her home and it was brought for her benefit. She's effectively in the same position as anyone else who has bought their house. This is a personal matter in that it concerns her home.

- ARAG says the intention of the wording is that “personal capacity” does not extend to someone acting as a trustee. I would agree if Ms A was a trustee of a trust that related to, for example, a charity or some other organisation, which is an entity in its own right and where she is not the beneficiary. That’s not the case here.
- In the particular circumstances of this case, it would not be fair to decline cover on a strict application of the policy term.

There was some delay, which was upsetting for Ms A, but I agree the compensation previously offered is fair. If ARAG hasn’t already paid that compensation it should now do so.

My final decision

I uphold the complaint and direct ARAG Legal Expenses Insurance Company Limited to

- Accept the claims and deal with them in line with the remaining policy terms.
- If it hasn’t already done so, pay the compensation of £150 offered to Ms A.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms A to accept or reject my decision before 13 August 2025.

Peter Whiteley
Ombudsman