

## **The complaint**

Mr and Mrs S' complaint is about a claim they made on their ARAG Legal Expenses Insurance Company Limited trading as DAS ('ARAG') landlord's protection insurance policy for loss of rents, following legal action against their tenants.

Mr and Mrs S say that ARAG treated them unfairly by declining their claim for loss of rent.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

Having done so, I don't uphold Mr and Mrs S' complaint for broadly the same reasons set out by the investigator. This is why.

The starting point is the policy terms. They make rent guarantee conditional on the following:

*"You have obtained a satisfactory reference\* for each tenant and each guarantor from a referencing service before the tenancy started."*

*"\*The reference must include: written references from a previous managing agent or landlord; an employer (or any other financial source); and a credit-history check (including the Enforcement of Judgments Office, County Court Judgments and bankruptcy)."*

In this case it's not in dispute that Mr and Mrs S did not obtain either an employer or other financial source check from a referencing service. Mr and Mrs S say this was because their tenants were sole Directors of their own business so they could not obtain an employer's reference. I have not however been provided with evidence to support that they obtained a contemporaneous check on the tenants' income from a referencing service at the time they agreed to let their property to the tenants. And it's clear to me that a written reference from *"any other financial source"*, such as the tenant's accountant was not sought through such a service. Mr and Mrs S were therefore in breach of the policy condition that would have enabled them to make a successful rent guarantee claim.

In this case Mr and Mrs S say that the breach of condition would have made no difference to the outcome of their claim for rent guarantee and as such ARAG shouldn't be entitled to rely on it. I've thought about what they've said. Their submissions are based on the premise that the tenants' annual accounts filed at Companies House in 2021 showed they had net current assets of around £473,600, almost all of which was stated to be 'Profit and Loss Reserves'. Mr and Mrs S say that if evidence had been requested from the tenants' accountant at the time, all they would have been told is that the tenants were in a good financial position. I understand that the tenants paid 12 months of rent upfront and that it wasn't until around two

and a half years later that their ability not to pay rent was affected. Mr and Mrs S say this was due to costly litigation the tenants were involved in that is documented by a reported case.

I've thought about what Mr and Mrs S have said, but I don't reach the same conclusions as them that a written reference from another financial source through a referencing service would have made no difference. From what I've seen the tenants paid their 12-month rent reserve from the sale of their property- a one-off event. The net assets of the business on a standalone basis don't inform the income the tenants took as Directors compared to their own personal outgoings. A reference from their accountant or any other financial source commenting on those issues would have been much more revealing. Without sight of what that might have said, I can't know if their financial position would have been satisfactory, as contended by Mr and Mrs S and neither can they. The involvement of a credit reference service would almost certainly have ensured that information would have been sought from appropriate sources such as the tenants' accountant which would have included answers to questions about their income and outgoings at the time, quite aside from their business.

I appreciate that the tenants had met their rental obligations for around two and a half years before defaulting, but that doesn't mean they would have always been able to do so, had they not been impacted by legal costs in a Court case they were involved in. As I said, the evidence I have seen points to the initial rent being funded from an exhaustible pot- the sale proceeds of a property. And without sight of a true financial reference at the time Mr and Mrs S took on their tenants, I can't say that the absence of it would not have made a difference to the position Mr and Mrs S found themselves in, in 2024.

Overall, I'm satisfied that ARAG were entitled to turn down Mr and Mrs S' claim in the way that they have because the evidence provided does not support that the breach of condition would, on balance, have made no difference to the loss being claimed here. That's because it is equally likely that the tenants' income and outgoings meant they were not in a position to afford the rent once their proceeds of the sale of their property was exhausted. Neither I or Mr and Mrs S can know that at this point.

In closing, Mr and Mrs S have said they're not pursuing a complaint against ARAG for poor service in relation to their claim. As such I haven't considered this issue as part of this complaint.

**My final decision**

For the reasons set out above, I don't uphold Mr and Mrs S' complaint against ARAG Legal Expenses Insurance Company Limited trading as DAS.

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

Lale Hussein-Venn  
**Ombudsman**