

The complaint

Mr and Mrs P are unhappy with what ARAG Legal Expenses Insurance Company Limited did after they made claims on their legal expenses insurance policy.

Although the policy is in joint names, as the claims have been largely pursued by Mr P, I'll mainly refer to him in this decision.

What happened

Professional negligence claim

Mr P sought assistance from his policy with a professional negligence claim against solicitors who acted for him following a motor accident. The claim was referred to panel solicitors who advised it didn't have reasonable prospects of success (a requirement of the policy). ARAG issued a final response to the complaint Mr P made in September 2023. The issues covered in that don't form part of this decision.

In February 2024 the panel solicitors said they'd received further information from Mr P and asked ARAG whether it would fund a reassessment of his claim. ARAG initially thought he was seeking funding for a new claim but agreed funding in June 2024 for the panel solicitors to carry out a further assessment. It also said it would pay £300 in recognition of the distress and inconvenience caused by its delay. In July 2024 the panel solicitors explained they hadn't changed their assessment of the claim. ARAG said as the prospects requirement hadn't been met it wouldn't be providing funding for the claim.

Motor insurer claim

In November 2023 Mr P asked ARAG for assistance with a claim against a motor insurer. He said they hadn't paid for his car which was written off following his accident. ARAG asked him to log that claim through its portal. Following further contact from Mr P it advised the same in May 2024. In response Mr P said it was the professional negligence claim he wanted to progress. However, following his contact with the panel solicitors they told ARAG in July 2024 he did have a potential claim against the insurer.

ARAG authorised funding for that to be reviewed. It says the solicitors then highlighted a policy exclusion relating to the settlement payable under an insurance policy. ARAG thought that applied to Mr P's claim and said it wouldn't be providing funding for it.

Property claim

In May 2024 Mr P said an error by HM Land Registry had led to two neighbours applying for land he owned and he wanted legal assistance. ARAG asked for further information on the claim including when the issues began and who the claim was against. Mr P said he wanted to claim against two neighbours and the issues began in 2023 when a neighbour built on his land and damaged his fence. He also said they'd made a false application to the Land Registry for possession of his land.

ARAG turned down the claim. It said the policy didn't provide cover to establish the ownership of land and so resolution of the issue with the Land Registry would need to be funded by Mr P. And it would only be able to assist for a claim with property damage and trespass once that had taken place. It also thought the dispute began prior to the start of Mr P's policy with it (June 2022) and cover wasn't provided where that was the case.

Our investigator's view

Our investigator didn't think there was more ARAG needed to do to put things right. Although the prospects assessment on the professional negligence claim had been produced by a paralegal ARAG had provided comments from a qualified solicitor who agreed with it. He thought it was reasonable of ARAG to rely on that when concluding the claim didn't have reasonable prospects of success. And he thought the £300 ARAG had offered did enough to recognise the impact on Mr P of the delay in that reassessment being obtained.

For the motor insurer claim he accepted there had been some confusion over this but didn't think it was clear Mr P wanted to pursue this as a separate cause of action until the panel solicitors contacted ARAG in July 2024. ARAG declined that claim based on advice that firm provided. But in subsequent correspondence (after its February 2025 final response) it accepted the exclusion it had relied on didn't apply and it would arrange for this to be assessed. Further issues with this would need to be considered as a separate complaint.

He thought the boundary dispute had been an issue since 2015. And while this claim related to alleged trespass by Mr P's neighbour it was directly connected to the question of land ownership. He thought the issue did predate the start of the policy. In any case as the issue hadn't been resolved with the Land Registry he didn't think it was unreasonable of ARAG to say it couldn't assist with the trespass claim.

He didn't agree Mr P should have been able to choose his own solicitor as his claims hadn't yet been accepted by ARAG. And, taking into account the requirements of the Equality Act, he didn't think it had treated Mr P unfairly in the way it communicated with him.

Mr P didn't agree. He made extremely detailed submissions across a number of emails (all of which I've read and considered). A number of those relate to the service we provided when dealing with his complaint. Those matters have been considered separately. In relation to the merits of his complaint the key points he raised were as follows:

Professional negligence

- He didn't accept the advice given by the panel firm impacted the merits of his claim; the only issue was that it couldn't be quantified (which was no longer the case following settlement of the underlying claim). And he'd had to chase repeatedly in order for ARAG to agree the claim could subsequently be reviewed. He didn't accept the panel firm had produced a new assessment in July and said neither he or the solicitors who were acting for him had been contacted. And no new information had been supplied for the panel firm to review.
- He didn't think a paralegal was able to give an opinion on the claim and so the outcome they reached should be disregarded. It wasn't appropriate for us to consider comments subsequently made by a solicitor which hadn't been available at the time. In any event he didn't accept that solicitor would accept there had been failings in the previous advice.
- He thought ARAG should review the whole file to establish which solicitors had prejudiced his claim. He said the underlying claim had now settled but he'd been forced into that settlement as his current solicitor refused to go to court and he was told he had

no option but to accept. In the light of the failings by solicitors who acted for him he should have been allowed to choose his own firm.

Motor insurer claim

- He said this had been wrongly turned down by ARAG on the basis of an exclusion and while he'd been told this was now being assessed as a contract dispute there wasn't evidence of that having progressed.

Property claim

- The claim involved two neighbours; one of who had applied to the Land Registry for ownership of land and the other who damaged his fence. However, that had been merged into one claim by ARAG. He thought the policy should cover action in relation to both claims. In any event the damage to his fence was a separate claim where there was no dispute over ownership (and court action to recover his losses had now been successful).
- He didn't accept the dispute had been ongoing since 2015 (and in any case he'd been insured by ARAG since then); there had been a separate dispute with the builder at that time but that was unrelated to the neighbour issues. The trespass related to the neighbour who had damaged his fence and there was an ongoing dispute with them over the boundary (unrelated to the builder issue). And action couldn't be taken to register that land as it was below the tolerances the Land Registry would act on. In any event the issue had been resolved as the matter had been settled.

Reasonable adjustments

- He'd asked for ARAG to deal with matters by email but it told him to use its website or the phone to log claims and this wasn't appropriate for him. And he didn't think it should have sent him multiple emails in order for the property dispute claim to be logged.

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.

I recognise this has been a very difficult time for Mr P. He had a serious car accident and I understand has significant mental and physical issues as a result of that. While we've been looking into his complaint he's told us how unwell he's been and I was very sorry to learn of how tough things have and continue to be for him. However, the question I need to consider is whether ARAG did anything wrong when dealing with the claims he made on his legal expenses policy (and if so what the impact of any failings has been on Mr P).

In relation to that the relevant rules and industry guidelines say ARAG has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Professional negligence

Mr P's policy covers contract disputes which it says includes "*a dispute arising from an agreement or an alleged agreement which you have entered into in a personal capacity for...buying or hiring in goods or services*". I think it's accepted he had a contract with the

solicitors who acted for him. So the professional negligence claim he wanted to bring could, in principle, be covered by this section of the policy.

However, it's a requirement for cover to be provided that reasonable prospects exist for the duration of the claim. The policy says that means *"the prospects that you will recover losses or damages (or obtain any other legal remedy that [insurer] have agreed to, including an enforcement of judgment), 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 the panel solicitors told ARAG in February 2024 they'd received further information from Mr P and asked if it would fund a reassessment of his claim. There was then delay by ARAG in progressing matters because it thought this related to a new claim which wasn't the case. However, it did agree funding for a reassessment in June 2024. I appreciate that delay will have been frustrating for Mr P and put him to avoidable time and trouble in trying to get ARAG to progress this. But think the £300 it's already agreed to pay does enough to recognise the impact on him of what it got wrong here.

Mr P says no reassessment of the claim was then produced I don't agree. I've seen an opinion produced by the panel firm dated 9 July 2024 (and addressed to Mr P) which is clearly a further assessment of his claim. He says that firm didn't make contact with him prior to carrying out that assessment to obtain information. The actions of the panel firm when carrying out their legal role aren't something we can consider. But if it was clear their assessment was based on incomplete information that might be something ARAG should have followed up on.

I don't think the evidence shows that was the case here. Following ARAG's agreement to fund a reassessment the panel firm contacted Mr P (on 20 June 2024) and asked for any further evidence he wanted it to review (including whether any potential losses had now crystallised). The firm then sought clarification on information Mr P provided and said at the start of July *"in light of your comments and confirmation that there is no further evidence you wish for me to review, I shall carry out my further assessment based on the evidence I have on file"*.

However, that assessment was carried out by a paralegal. I note the comments Mr P has made about their ability to advise on a claim but our long standing approach is that it's reasonable for an insurer to rely on an assessment from a paralegal as long as they're working under the supervision of a suitably qualified lawyer with experience in the area of law they're considering. It's not clear the supervision arrangements for this paralegal met that requirement.

I appreciate Mr P feels their opinion should therefore be disregarded. But if ARAG had acted correctly it would have obtained confirmation a qualified solicitor had reviewed and agreed with the opinion produced. Following our intervention that's what it's now done. So it's already carried out the action I'd have recommended to put things right here. Mr P suggests the solicitor's opinion shouldn't be relied on but I don't agree. I've reviewed that opinion which is detailed and gives clear reasons for why the solicitor agrees with the paralegal who previously reviewed the matter. And that solicitor specialises in professional negligence claims.

So if ARAG had obtained that confirmation earlier the position on Mr P's claim professional negligence claim wouldn't have changed. It would still have been declined because ARAG would have been entitled to rely on the legal opinion on prospects it had been provided with. I don't think ARAG needs to carry out a further review of the file as Mr P suggests.

Mr P says ARAG should have allowed him to choose his own solicitor. He'd only have been entitled to do so from the point at which legal proceedings had become necessary (so from when negotiations had failed and formal legal action was required). That doesn't appear to be the case here. In any event I don't think that's something which would fairly apply unless cover was available under Mr P's policy in the first place. That wouldn't be the case unless it had been shown to have reasonable prospects of success. So I don't think that is something ARAG needed to agree to.

However, as his underlying claim has settled it may now be possible to consider whether he's suffered a loss as a result of the alleged professional negligence by his former solicitors. In recent correspondence ARAG has agreed the prospects can therefore be reconsidered. If Mr P is unhappy with what it now does that's something he could raise as part of a fresh complaint.

Motor insurer claim

Mr P said he wanted to pursue a claim against the insurer of a motor insurance policy in November 2023. I think there was again some confusion by ARAG in distinguishing that from the separate but related professional negligence claim Mr P was pursuing. But as Mr P then said it was the negligence claim he wanted to progress I don't think it was unreasonable of ARAG to seek to move that forward. And it was only clear Mr P wanted to progress the motor insurer claim following the panel solicitors' further review of the professional negligence claim in July 2024.

I think it was right ARAG then authorised funding for this to be reviewed. However, it does now appear to have accepted that an exclusion for "*the settlement payable under an insurance policy*" was wrongly applied. It's decision not to apply that exclusion was after it issued its February 2025 final response. So I don't have further details on that. But I understand (after some delay) it is now reviewing this claim. And it has set up a separate complaint to consider the delay in progressing it and whether compensation should be awarded for that. I think that's the most appropriate way for this issue to be addressed at this stage. If Mr P is unhappy with the response ARAG provides that's something we could then consider as a separate complaint.

Property dispute

Mr P's policy includes cover for property protection which includes "*a civil dispute relating to the Property, or personal possessions, you own, or are responsible for, following...an event which causes physical damage to such property (but the amount in dispute must be more than £250), a legal nuisance (meaning any unlawful interference with the use or enjoyment of land, or some right over, or in connection with it), a trespass*".

However, it's a condition for cover to be provided that "*you must have, or there must be reasonable prospects of establishing you have, the legal ownership or right to the land or personal possessions that are the subject of the dispute*". The policy also requires that "*the Date of Occurrence of the insured incident is during the Period of Insurance*". It defines Date of Occurrence as "*the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, 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.)*"

When he first contacted ARAG about this claim in May 2024 Mr P indicated he wanted to bring his claim against HM Land Registry and also referenced the actions of his neighbours. I don't think it was clear at that stage what claim Mr P wanted to bring (or who the respondent should be). I think it was reasonable of ARAG to ask him for further details about that including when the issues began (given the requirement for the date of occurrence to fall within the period of insurance).

In response Mr P said the claim was against two neighbours who had trespassed on his land and referenced issues with a fence. ARAG said that the claim wouldn't be covered as Mr P hadn't established his ownership of the disputed land. However, the policy doesn't require that to be the case for cover to be provided; it says where that isn't the case there must be reasonable prospects of establishing that. Here Mr P says the Land Registry accepted the boundary had been recorded in error. So I think it's possible if ARAG had investigated this further it would have found this condition of the policy had been met. And in any event part of Mr P's claim related to damage to his own fence which would exist regardless of any dispute over land ownership.

However, ARAG also said the date of occurrence of the claim was prior to the policy start date. Having reviewed information Mr P provided I don't think that was unreasonable. I accept he had an initial dispute with the builder of his property (in 2015) which was resolved. That does appear to be unrelated to the subsequent issues he had with his neighbours. But it appears in 2016 he was advised by the Land Registry that one of his neighbours might be seeking adverse possession of his land (and at the time the neighbour disputed what the Land Registry had advised were the boundaries of his property).

In relation to the other neighbour it appears the dispute over the ownership of the area of land in question also dates back a number of years. Those neighbours are reported as saying *"they have always felt that the property formed part of their main residence and have treated it as such since 1992"*. And it appears those were issues that Mr P was aware of prior to the policy being taken out.

I appreciate the damage to his fence may have occurred later but it doesn't appear that was within the policy period either. Mr P says *"in 2021 my neighbour trespassed on our land and prevented access by blocking access and attaching fixings to our fence"*. In any event the evidence suggests that formed part of an ongoing dispute with the neighbour in question. And while Mr P says he's been insured with ARAG from at least 2021 I haven't seen evidence to show his current policy was in place prior to June 2022. That's also the date Mrs P told us insurance had been in place from.

I think it was fair of ARAG to conclude, based on the available evidence, that the condition requiring date of occurrence to be within the policy period hadn't been met. So I think it acted fairly in declining to fund the claim. If Mr P is able to evidence the issues he subsequently claimed for are unrelated to the earlier problems (or he had cover in place from an earlier point) I'd expect ARAG to review matters. However, as it appears this issue has now been resolved it's not clear there's an ongoing claim to consider in any event.

Reasonable adjustments

Mr P says it wasn't appropriate for ARAG to ask him to log a claim through its website as his disability means email is his preferred method of contact. And he doesn't think it was appropriate of ARAG to ask multiple questions in order to set up his property claim.

I think Mr P is arguing here that ARAG has failed in its duty to make reasonable adjustments under the Equality Act 2010. I've taken the Equality Act into account when deciding this complaint – given that it's relevant law – but I've ultimately decided this complaint based on

what's fair and reasonable. If Mr P wants a decision that ARAG has breached the Equality Act 2010, then he'd need to go to Court.

I understand Mr P's disability (and the adaptations required as a result) mean he can't access websites. So I appreciate he wouldn't have been able to log his claim through ARAG's web-based portal. And he did explain to ARAG in November 2023 when contacting it about the motor insurer claim "*I am disabled and under care but can give this information to you by phone or email*".

So I agree it wasn't appropriate for ARAG to direct him to its portal for the claim to be logged. However, it did also provide a phone number through which the claim could be made. And while Mr P has now suggested he couldn't have used that I think it was reasonable of ARAG to think he could (at that point) as he said it was an option for him.

In addition, for the reasons I've already set out, although ARAG did become confused as to what this claim related to it wasn't clear until July 2024 that Mr P wanted to pursue it. So I don't think he's lost out because of what ARAG got wrong. And while I recognise ARAG did subsequently send him a number of emails about the property claim I don't think the questions it asked were unreasonable. It did need to establish who that claim related to, what the issues Mr P wanted to pursue were and whether the events giving rise to it pre-dated the start of his policy.

My final decision

ARAG Legal Expenses Insurance Company Limited has already made an offer to pay £300 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that ARAG should pay Mr and Mrs P £300 (if it hasn't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 25 September 2025.

James Park
Ombudsman