

The complaint

Messrs M and Mrs M complain about a claim they made on their ARAG Legal Expenses Insurance Company Limited ('ARAG') legal expenses insurance policy.

Messrs M and Mrs M say that ARAG treated them unfairly.

In this complaint all references to ARAG include their claims handlers.

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 won't be upholding Messrs M and Mrs M's complaint for broadly the same reasons set out by the investigator. Before I explain why, I wish to acknowledge both Messrs M and Mrs M's strength of feeling and the volume of submissions they've made about their complaint. Whilst I've read everything they've said, I won't be addressing it all. That's not intended to be disrespectful. Rather it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of Messrs M and Mrs M's complaint, namely whether ARAG treated them unfairly. I've set out my findings under the headings below.

Appointment of the panel firm

Messrs M and Mrs M are unhappy with the appointment of the panel firm in this case. They say they wanted to appoint their own lawyer and that they were entitled to do this.

I have been provided with a copy of Messrs M and Mrs M's policy. It says:

"Your representation

(a) On receiving a claim, if a legal representation is necessary, we will appoint a preferred law firm or tax consultancy as the insured person's appointed representative to deal with their claim. They will try to settle the insured person's claim by negotiation without having to go to court.

(b) If the appointed preferred law firm or tax consultancy cannot negotiate settlement of the insured person's claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest then the insured person may, if they prefer, choose a law firm or tax expert of their own choice to act as the appointed representative. We will choose the appointed representative to represent the insured person in any proceedings where we are liable to pay a compensation award."

It's common for legal expenses insurance policies to contain such a term and it's consistent

with the relevant laws applicable to freedom of choice. Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 says:

“where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)”

The phrase “any inquiry or proceedings” means when it becomes necessary to issue court proceedings, or proceedings in another formal place of inquiry, such as a tribunal. Messrs M and Mrs M complaint wasn't, as far as I can see, at a point where it had been litigated or was about to be. Rather the panel firm were simply trying to establish whether the claim had reasonable prospects of success, as required by the policy. And in the absence of anything to support that Messrs M and Mrs M had a conflict of interest with the panel firm, I can't see that they had the freedom to choose their own lawyer. The fact that they didn't agree with the panel firms' advice doesn't in itself amount to a conflict of interest such that they were entitled to a lawyer of their own choice at that point. And a conflict of interest is usually something the panel firm would identify, like where they've acted for the other party in claim in the past.

Messrs M and Mrs M have said that the panel firm were not independent and instead were acting on ARAG's behalf to ensure the claim didn't meet the policy requirements. As the investigator explained, the panel firm are independent legal professionals with their own codes of conduct and a separate regulator and as such do not fall within my remit. Because of this I cannot comment on their actions or determine whether they did something wrong, as requested by Messrs M and Mrs M. If they remain unhappy with the panel firm's conduct, they can complain to them directly or through the Legal Ombudsman.

It's true that the panel firm were appointed by ARAG to consider the merits of Messrs M and Mrs M's claims but that doesn't mean they are the same or a related entity to ARAG. And the fact that ARAG instructed them to report on the merits of the claim in itself doesn't give rise to a conflict of interest. As funders or a potential claim, ARAG were entitled to instruct a panel firm to consider whether it fell within policy cover on the question of merits and this is not something we would consider to be unfair in the circumstances.

Prospects of success

Messrs M and Mrs M policy, like virtually all other before the event insurance policies requires their claim to have reasonable prospects of success. We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurance to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. ARAG did this. The panel firm ultimately concluded that the claim Messrs M and Mrs M wanted to bring did not have reasonable prospects of success. I appreciate that Messrs M and Mrs M don't agree with the advice that's been given but that doesn't mean that ARAG were wrong to decline their claim. And whilst Messrs M and Mrs M have said they've instructed their own Solicitors to act for them, I haven't seen anything to suggest their claim did have reasonable prospects of success such that ARAG should have reconsidered their position. We would expect to see an alternative fully reasoned opinion from a lawyer of equal standing that supports the merits of Messrs M and Mrs M's before we

would say ARAG should review things again. In the absence of that, I can't say ARAG did anything wrong.

Delays

There is no dispute over the fact that there were delays on ARAG's part in their dealing with Messrs M and Mrs M's claim. They accepted they didn't always act promptly in responding to their emails and that Messrs M and Mrs M had to chase them on a number of occasions. ARAG identified a total delay of 23 working days beyond their service standards and offered Messrs M and Mrs M £125 to compensate them for this.

Messrs M and Mrs M don't think this amount goes far enough. They haven't however made any submissions to support that the delays were any longer than ARAG have identified.

I've considered the position and there is a great deal of correspondence challenging the panel firm's involvement and some of the delays were on the panel firm's part, which ARAG was chasing. ARAG weren't responsible for the actions of the panel firm, and I've already set out my findings about ARAG being entitled to instruct them in the way that they did. Because of this I can't say any delays by the panel firm were something ARAG were responsible for.

I appreciate that Messrs M and Mrs M could have gone elsewhere and sought funding on a privately paying basis sooner, but I haven't seen anything to support that a total delay of 23 working days meant there was a tangible impact on the merits of their claim or that they were prejudiced in some specific way by not doing so sooner. They were after all free to do this quite early on but instead chose to keep challenging the panel firm's view of the merits of their claim without providing a legal opinion of their own to support their position. Because of this I think the award of compensation is adequate and takes into account the trouble and upset of Messrs M and Mrs M having to chase ARAG for responses.

My final decision

For the reasons set out above, I don't uphold Messrs M and Mrs M's complaint against ARAG Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, Mr M, Mr M and Mrs M to accept or reject my decision before 29 October 2025.

Lale Hussein-Venn
Ombudsman