DRN-5796771

The complaint

Mr B and Mrs K complain that ARAG Legal Expenses Insurance Company Limited withdrew cover for a claim on their landlord's legal expenses insurance policy and failed to pay their legal costs.

What happened

Mr B are joint policyholders but Mr B has dealt with the claim and complaint, so I'll generally refer to him.

Mr B and Mrs K own a property. They arranged for a letting agent to find tenants for them. Mr B made a claim on the policy to cover the legal costs of taking possession proceedings and recovery of unpaid rent. ARAG accepted the claim for possession and appointed panel solicitors to act, but didn't agree to cover other aspects of the claim.

The solicitors started dealing with the possession claim but later advised that the claim no longer had a reasonable chance of success after the people occupying the property obtained an injunction against Mr B. It's a requirement of the policy that a claim has reasonable prospects of success for cover to be provided, so ARAG said cover would be withdrawn.

Mr B was unhappy with the way the claim was handled by ARAG. He said he had to instruct his own solicitors and the way they dealt with the claim showed the advice from the panel firm had been wrong.

Following the injunction, it was alleged Mr B had breached the terms of the court order and contempt proceedings were pursued. He asked for cover to defend the injunction and contempt proceedings, but that claim was declined. He also said he should be covered for the unpaid rent under the tenant default section of the policy.

In response to Mr B's complaint, ARAG said:

- The panel solicitors had advised the possession claim no longer had reasonable prospects of success, so cover was withdrawn correctly. It was reasonable to rely on the legal advice. The solicitors advised that if the injunction was set aside, they could reconsider the possession claim.
- The policy only covered certain types of legal disputes and these did not include the injunction or defending the other parties' claim. The tenant default claim would only be covered if references had been obtained for the tenants, and there were no references.
- Although Mr B had incurred legal costs, these were not covered by the policy.

ARAG accepted there had been some delays and offered compensation of £100 for this.

When Mr B referred the complaint to this Service, our investigator said it was reasonable for ARAG to rely on the legal advice and withdraw cover for the possession claim. If Mr B disagreed with the advice, he could provide his own legal opinion and ARAG could reconsider.

The investigator said there was no cover for the injunction or legal defence claims, and it was reasonable to decline the tenant default claim as Mr B had not met the policy requirement for references to be obtained for the tenants. She thought he compensation of £100 was fair.

Mr B then provided a barrister's opinion which was favourable. ARAG said it would consider the advice. It was agreed this would be included in the investigation.

Mr B was unhappy that his costs were not all being covered. He said he was forced to instruct his own solicitors as a result of the poor handling of the case by the panel firm and, as the panel firm was appointed by ARAG, it was only fair that ARAG should cover those costs.

There was further correspondence with both parties. After considering further comments, the investigator said:

- It was still her view that there was no cover for the injunction, legal defence or tenant default claims.
- It had been reasonable to withdraw cover, based on the legal advice at the time. ARAG had reviewed counsel's advice and agreed to reinstate cover for possession proceedings, subject to this claim having prospects of success. This would include the costs of setting aside the injunction, if that was a necessary part of seeking possession. And ARAG had said it would consider paying the cost of obtaining counsel's opinion, which was reasonable.
- The was no evidence ARAG had agreed the problems were caused by the panel solicitors and in any event, she couldn't consider the solicitors' actions. Any complaint about the panel solicitors would need to be dealt with through their own complaints process.
- ARAG's agreement to cover the possession claim and pay counsel's fee was reasonable. She didn't think it needed to do anything further

Mr B remains unhappy and says he's had to pay legal costs, which he considers should be covered.

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.

This matter has been ongoing for some time, and we have received extensive comments and documents from the parties. I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome I've reached. This is in line with our role, which is to provide an impartial review, quickly and with minimal formality.

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking 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.

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.

When deciding if the claim was dealt with fairly, the starting point is the policy terms. These set out the basis of the insurance contract agreed between the two parties.

The policy provides cover for certain types of disputes but this is subject to the terms and conditions. The relevant points include:

- The policy includes cover for possession claims, eviction of squatters, rent recovery and tenant default.
- Cover for possession claims is subject to the correct notices having been served on the tenants. Cover for tenant default is subject to satisfactory references having been obtained for the tenants.
- Legal defence costs are covered if the policyholder is being prosecuted in a criminal court.
- There is no cover for costs incurred without ARAG's consent.
- Cover will only be provided for claims that have reasonable prospects of success.

It's a requirement of almost all legal expenses insurance that cover will only be provided if a claim is likely to be successful. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed. Insurers will obtain legal advice about the prospects of success and are entitled to rely on that advice unless it's obviously wrong. They're entitled to keep this under review as a case progresses.

Having considered everything carefully, I think it was fair for ARAG to withdraw cover for the possession claim and refuse cover for the other claims, and I think the offer it has made to deal with things going forward is fair, for the following reasons:

- There's no cover for tenant default unless references were obtained for the tenants. This is a common policy requirement, and it's reasonable to expect a landlord to carry out certain checks and referencing before letting a property to tenants; this helps assess the risk. Mr B didn't obtain any references and in these circumstances it was fair to decline cover for this.
- Cover for legal defence only applies to defending a claim in a criminal court. I appreciate Mr B says contempt proceedings are similar in nature to criminal proceedings, with similar sanctions. But the policy term is clear and specifically says it only applies to proceedings in a criminal court. These proceedings were in a civil court.
- It was reasonable to withdraw cover in view of the legal advice. ARAG received legal advice that the claim was no longer likely to be successful. It was entitled to rely on that legal advice, which was provided by someone suitably qualified in the relevant area of law.
- Mr B says the advice was wrong – as shown by the advice he later obtained. But it wasn't so obviously wrong that this would have been obvious to ARAG. In those circumstances, it was reasonable to rely on the advice.
- Mr B incurred legal costs at a time when he wasn't covered, and ARAG hadn't agreed to those costs.
- Mr B provided more information in response to the panel solicitors' assessment. ARAG sent those comments to the panel solicitors and asked them to confirm the position. This is in line with good practice and what I'd expect an insurer to do. The solicitors' position didn't change and they explained their reasons for this to ARAG.
- When Mr B provided counsel's opinion, ARAG reviewed things in the light of that

advice and agreed to reinstate cover for the possession claim (and setting aside the injunction if necessary for the possession claim) subject to this having reasonable prospects of success. It also agreed to pay counsel's fees. This was reasonable.

- ARAG acknowledged it failed to provide responses to Mr B in line with its service level agreements. This would have been frustrating for Mr B, at a time which was already difficult for him, but the compensation ARAG offered is a fair way to acknowledge the distress caused.
- Mr B found himself in a very difficult position, having to deal with legal proceedings to remove the occupiers, who were not paying any rent, and had to pay substantial legal costs himself after cover was withdrawn. He said he was forced to instruct his own solicitors as a result of the poor handling of the case by the panel firm and it was only fair that ARAG should cover those costs. But I don't think those costs arose as a result of any failing by ARAG - once the insurer appoints a solicitor, its role is limited, and ARAG is not responsible for the way the solicitors managed the case or the legal advice they gave.

ARAG has offered to reinstate cover for the possession claim, cover counsel's fees and pay compensation of £100. Those offers were fair and I don't think it needs to do any more.

My final decision

ARAG Legal Expenses Insurance Company Limited has made an offer to reinstate cover for the possession claim (and setting aside the injunction if necessary for this), subject to this having reasonable prospects of success, pay counsel's fees and pay £100 compensation to settle the complaint, and I think this offer is fair in all the circumstances.

So my decision is that – if it hasn't already done so – ARAG Legal Expenses Insurance Company Limited should reinstate cover for the possession claim (and setting aside the injunction if necessary for this), subject this having reasonable prospects of success, pay counsel's fees and pay £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs K to accept or reject my decision before 3 October 2025.

Peter Whiteley
Ombudsman