

The complaint

Mrs S and Mr S complain about the way ARAG Legal Expenses Insurance Company Limited managed a claim on their legal expenses insurance policy.

Although this is a joint policy, Mrs S has dealt with the claim and complaint correspondence so I will mostly refer to her.

What happened

Mrs S and Mr S made a claim on their policy in 2015 to cover legal costs relating to a dispute with their neighbours. The claim wasn't covered initially but in 2017 ARAG appointed one of its panel firms of solicitors (which I will call "D") to act for them.

Court proceedings were issued and in 2023 various steps were taken in relation to exchanging evidence and preparing the case for trial. Mrs S was unhappy with the way D was conducting the case and considered changing solicitors. She raised issues with ARAG on a number of occasions. D responded to some of her concerns.

In August 2023 Mrs S raised further concerns and discussed with ARAG the possibility of changing solicitors. She said they would like to appoint another firm of solicitors ("L") and ARAG contacted L, but Mrs S said she didn't want ARAG to tell D about this yet.

In November 2023 Mrs S said she would prefer to stay with D, but by this time D had said the relationship with had broken down and it was no longer able to act.

Mrs S complained that it took months for ARAG to appoint L and in the meantime they were left without any solicitors to represent them and had to deal with the court process themselves. She said they had to pay L to carry out some work for them and also incurred court fees. And she said the only reason D stopped acting for them was because ARAG had wrongly told D they were changing solicitors.

In its final response to the complaint, ARAG accepted there had been some failings, including some delay appointing L, but said it was reasonable to wait while the costs position was resolved. ARAG also said it had tried to find other solicitors but only D had capacity to take the case on. ARAG offered compensation of £150 for the distress and inconvenience caused.

Mrs S didn't accept the offer and referred the complaint to this Service. Our investigator said:

- ARAG had accepted there were delays and poor service.
- There were issues it needed to confirm before appointing new solicitors and the enquiries it made were reasonable, but it took longer than it should have.
- Mrs S says the solicitors stopped acting for them because ARAG told them she wanted to change solicitors, which she had asked to keep confidential. But the evidence doesn't show that was the reason – the solicitors said the relationship had broken down.

- The compensation didn't adequately reflect the level of distress and should be increased to £300.

ARAG accepted the view but Mrs S didn't and provided further comments. After considering these, the investigator said:

- It was reasonable for ARAG to want the new solicitors to review the case and make sure it was still in the scope of cover and they could take it on. But she was still of the view things took too long. Having considered the further information provided, she thought the compensation should be increased to £600.
- Mrs S had to pay some costs during the period in question but she didn't think ARAG should have to reimburse the costs, as the indemnity limit would have been reached anyway.

ARAG again accepted the investigator's view but Mrs S didn't and requested an ombudsman's decision.

I issued a provisional decision saying I was minded to uphold the complaint, and direct ARAG to reimburse costs Mrs S had incurred while she was without solicitors and pay compensation of £600. I set out my reasons as follows:

My provisional decision

This claim was originally made in 2015 and solicitors were appointed in 2017. Although there is a long history to the matter, this complaint only concerns the period between 28 June 2023 and 5 March 2024 and I'm only considering what happened during that time. I understand Mrs S has made a further complaint about more recent events, which will be considered separately.

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. I use my judgement to decide what's fair, based on the main crux of a case.

I've considered the way ARAG dealt with the claim during the relevant period, taking into account the relevant industry rules and guidance, which say insurers must deal with claims promptly and fairly, support a policyholder to make a claim, and not unreasonably reject a claim.

Where the evidence is not definitive, I need to make on a judgment about what I think is more likely to happen based on the evidence that is available.

There are two key issues I need to determine – whether ARAG telling D that Mrs S wanted to change solicitors is what caused them to stop acting; and whether there were unreasonable delays by ARAG during the period in question.

On the first point, the evidence is that Mrs S asked ARAG not to say anything to D at that point about changing solicitors but despite that, they were told. So there was a failing in relation to this.

I don't, however, think this is the only reason the solicitors decided not to act. ARAG contacted them again soon after to say they were still appointed to act but the solicitors didn't want to continue. They didn't refer to being told Mrs S was considering changing solicitors - they said they couldn't act because the relationship had broken down.

Mrs S disputes that but looking at the history of the claim, it's clear she had been unhappy with their handling of the case for some time. She had raised concerns several times and had previously discussed changing solicitors. ARAG is not responsible for the way the solicitors conduct the legal case. Where a policyholder tells an insurer they're unhappy with the solicitors, I'd expect the insurer to look into that and pass on those concerns to the solicitors. ARAG did that and so D would have been aware of the concerns. I think it's more likely they reviewed the history of the case and concluded it wasn't possible for them to continue, even if Mrs S was now saying she wanted them to.

This happened in November 2023. ARAG had already contacted L in October about appointing them to take on the case but then put things on hold.

L raised some points about the indemnity limit and what would happen if that were reached. Mrs S said they asked for substantial funds to be paid on account, which she wasn't happy with. There were various issues to be resolved about how much of the indemnity limit would still be available and what would happen if the costs were likely to exceed the limit.

It was reasonable for ARAG to resolve these points before agreeing to appoint L. But it wasn't until 2 February 2024 that ARAG wrote to L asking it to review the case and provide its assessment.

In total, it was around four months before ARAG instructed L to review the case.. And L couldn't take the case on immediately as ARAG asked it to review the file first and provide an opinion about the merits of the case.

I think this timescale was too long – particularly when the court case was ongoing and there were court deadlines that had to be met for exchanging evidence and preparing for trial. ARAG has accepted there was some avoidable delay, and times when correspondence was not responded to as it should have been.

Mrs S says it shouldn't have been necessary for L to review the prospects of success of her claim, as nothing had changed. But it's an ongoing requirement that a claim has reasonable prospects to be covered, and it's reasonable for ARAG to review this periodically as a case progresses. That would have happened anyway before the case proceeded to trial and this was a natural point for a review.

If there had been no delay, L would have been appointed earlier. Mrs S incurred some costs during that period and I think it's unlikely she would have had to pay those if there hadn't been any delay. She shouldn't be out of pocket because of failings in the handling of her claim.

ARAG has said it will consider these costs and would contact Mrs S about this. I think that's reasonable and so, if it hasn't already done so, it should now deal with these costs. If Mrs S provides the evidence it needs of the costs, ARAG can assess a reasonable amount to pay.

All of this was very upsetting for Mrs S. Dealing with the court case was very difficult and the delays caused additional upset and inconvenience. She has provided details of what was happening in the litigation and the actions she had to take. Looking at the time period involved I think a payment of £600 would be fair to acknowledge the distress and inconvenience caused.

Mrs S has also raised concerns that ARAG had a conflict of interest, as it was also insuring the other party to the case, and because of the various relationships between the solicitors and others involved. It's not unusual for an insurer to be providing cover for both parties to a dispute and ARAG has procedures in place to ensure the claims are dealt with entirely

separately. I haven't seen any evidence of an actual conflict.

If Mrs S considers the solicitors had a conflict of interest, that's something she would need to take up with them. Solicitors would always be expected to consider whether there is a conflict and, in relation to whether they should act, that's not a matter I can consider. My role is limited to looking at how ARAG dealt with the insurance claim and I can't consider the solicitors' actions in relation to the underlying legal case.

Replies to the provisional decision

ARAG has replied to say it accepts the provisional decision and following acceptance of the decision, will proceed to settle the costs, though it says the indemnity limit has been exhausted so Mrs S will be responsible for a shortfall.

Mrs S has provided extensive further comments. While there is some repeat of comments made previously there are some additional documents and call recordings. I won't set them out in detail but the key points include:

- She has reviewed further correspondence between ARAG and L. This shows the fees and work were not agreed until 15 February 2024 (or possibly even later). And L didn't start work until March.
- She had only once mentioned to D she was considering a change, because it had suddenly, after months of little action, proposed a large volume of urgent work when she had been trying to secure a move to a firm introduced to her. She had hoped that by telling them, they would take account of her concerns and things would improve.
- Things didn't improve and in fact got worse – but ARAG was still telling D she was thinking about changing. She didn't mind ARAG passing on concerns, but didn't want it to tell D about a possible change of solicitors.
- The fact that ARAG told D about changing solicitors did have an impact – she'd had a productive discussion with her solicitor but their attitude changed after ARAG said she wanted to change. Even if this wasn't the sole reason for D withdrawing, that does not mean it should be dismissed. At the very least it had a significant influence on the decision.
- It became apparent changing to L would be complicated, due to their concerns about costs. L appear to have been asked to review the case from the beginning. This would be a substantial, time consuming job and a duplication of work already done.
- The course of the litigation changed during this period, where she had to deal with things herself, including dealing with the listing appointment for the trial.
- Allowing ARAG to review her costs would enable it to dismiss such costs or render them worthless.
- She has concerns about how the costs are being assessed – this will be part of the further complaint that will follow, but it's all part of an ongoing matter and they may not be able to accept this decision if it prejudices their ability to claim for larger losses later on.

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've considered the further evidence carefully and listened to call recordings but I'm not persuaded to change my provisional decision, for the following reasons:

- Mrs S has repeated some comments about the long history of the case. I'm not considering earlier events – or later events (which may be the subject of a further complaint).
- Looking at the events around October and November 2023, Mrs S has provided a copy of an email from D to ARAG saying they could no longer act. This just says the relationship has broken down and doesn't say it was because ARAG had said Mrs S was proposing to change solicitors.
- It's possible the fact ARAG said Mrs S was looking to change solicitors was a factor. But I have to look at all the circumstances.
- There was a long history of concerns about the solicitors, with previous complaints being made. Mrs S says she had previously mentioned changing solicitors in the hope it would have a positive effect and things would improve, but they didn't improve and in fact got worse.
- I don't dismiss the fact ARAG passed on that information – it may have been a factor. But I don't think it was the overriding one; there had clearly been a difficult relationship for some time, with complaints raised and at least one previous discussion about changing solicitors. Mrs S had been unhappy with the solicitors for a long time and they were aware of that. The solicitors had the opportunity to carry on representing her but chose not to. That was, ultimately, their choice.
- Even if it hadn't happened at that precise point, given the difficult relationship between them the evidence indicates it was still likely to happen. And whenever it happened, there would inevitably have been a period where discussions took place between ARAG and any new solicitors to agree the terms on which they would act, as well as time for those solicitors to review the file before starting any action. So it's likely Mrs S would have found herself in a similar position in any event.
- Mrs S has repeated her comments about the connection between L and the opponents' insurer. My view on this hasn't changed. ARAG has procedures in place to address this situation, which is not uncommon. In the end, it's for solicitors to decide whether they can act and to declare if they're prevented from doing so by a conflict of interest. That's not something I can comment on.
- Finally, while I note Mrs S' comments about assessing her costs, it's reasonable for ARAG to see details of those costs and assess them. I'd expect it to pay a reasonable amount and not arbitrarily reduce them. If there's any dispute about that, they can be reviewed by a costs assessor.

My final decision

My final decision is that I uphold the complaint and direct ARAG Legal Expenses Insurance Company Limited to:

- pay the reasonable costs incurred between December 2023 and February 2024 (on receipt of evidence from Mrs S of the costs) together with interest from the date she paid the costs to the date of settlement at 8% a year simple; and
- pay compensation of £600 for the distress and inconvenience caused.

If ARAG Legal Expenses Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs S and Mr S how much it's taken off. It should also give Mrs S and Mr S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

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 9 October 2025.

Peter Whiteley
Ombudsman