

## **The complaint**

Ms W's complaint is about a claim she made on her ARAG Legal Expenses Insurance Company Limited ('ARAG') legal expenses insurance policy.

Ms W says ARAG treated her unfairly and this led to her suffering considerable financial losses.

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

## **What happened**

In summary, Ms W made a claim on her ARAG legal expenses insurance policy for cover to bring a claim against her former employer.

ARAG appointed a panel firm to act for her (firm A) but Ms W encountered some difficulties with the Solicitor they'd appointed and asked for another firm to be appointed in their place.

Another firm of Solicitors was eventually appointed by ARAG (firm B). They instructed a Barrister to consider the merits of the claim. The Barrister concluded that the claim did not have over 51% prospects of success as required by the policy. As such ARAG withdrew funding. By this point Ms W was in litigation.

Ms W obtained her own Barrister's opinion which put the merits of her claim at above 51%. ARAG reimbursed her for these costs and agreed to continue funding the claim. By this point Ms W was close to the trial of her matter.

Eventually another firm of Solicitors (firm C) were instructed to act for Ms W and representation was put in place for the trial of the matter which was listed then postponed. Problems arose with the Barrister's fees when firm C asked ARAG to discharge the Barrister's outstanding fee note before the full trial of the matter. ARAG took the position that disbursements were not payable until the conclusion of the claim. Firm C explained that they were a small firm and not able to carry the Barrister's fees themselves and given the Barrister wasn't a panel Barrister, he would be unlikely to represent Ms C at the trial of the claim unless his fees were discharged. Agreement was eventually reached to pay half of the Barrister's outstanding fees in advance by ARAG.

Ms W's claim proceeded to a long trial. The judgment that followed was not supportive of her case. Ms W feels that ARAG are responsible for this. She says ARAG's delay in paying the Barrister meant he wasn't instructed until 3 days before the trial and that he admitted to the Judge he was unprepared as a result. She says that ARAG's handling of her claim generally cost her considerable sums which she had to fund privately to cover the costs they wouldn't. She also references delays, mistakes and the fact that she had to chase ARAG for responses when she was promised contact with them. ARAG offered Ms W £100 for failures in the service they provided but they don't accept they did anything wrong beyond this.

Our investigator considered Ms W's complaint and concluded it should be upheld. She thought there had been unnecessary delays in paying Ms W's Barrister and as such she said

that ARAG should pay £300 in recognition of this. Ms W does not agree so the matter has been passed to me to determine.

### **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 uphold Ms W's complaint for broadly the same reasons set out by the investigator. Before I explain why, I wish to acknowledge Ms W's strength of feeling about her complaint and the volume of submissions she's made. Whilst I've read everything she's 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 her complaint, namely whether ARAG treated her unfairly and if so what they should do to put things right.

As the investigator explained, there are matters that I'm not able to consider as part of this complaint, so whilst I've cited the background to it above, I'm not able to reach findings in respect of each aspect of this claim. That's because Ms W has made three complaints to ARAG which they have addressed in the following three final response letters:

- 7 July 2022
- 2 April 2023
- 4 July 2024

The subject of this complaint refers to the period between the final response letter dated 3 April 2023 and 4 July 2024. I can't address anything before that in this decision that has been considered before by ARAG. I understand Ms W had raised a separate complaint about the parts of her claim she was unhappy about between 8 July 2022 and 2 April 2023 with this Service, but an investigator concluded that we can't consider this because the complaint was brought out of time. That complaint was closed in April 2024. In this decision I will address only those matters that fall within my remit to do so.

It's not in dispute that ARAG recognised there were breakdowns in communication and that the service Ms W was provided with wasn't of the standard they usually expect. This included their failing to call her when they agreed to, and a different firm was instructed prior to firm C in error. ARAG offered Ms W £100 in recognition of this. I've thought about whether this award fairly compensates Ms W for these failings specifically. It's true that Ms W's claim was directed to a firm that didn't appear to have any employment experience before firm C was instructed but I can see the position was corrected within 10 days. I can also see there was at least one instance of Ms W not receiving a call back as agreed but appreciate from what she's said that there were also occasions on which she struggled to get through to ARAG which led to her having to follow up with them, which would have been frustrating. I think ARAG's offer of £100 fairly compensates her for these failings, however. That's because they weren't in my view critical to the outcome of her complaint though I accept they would have been both stressful and inconvenient.

I turn now to delays in ARAG making payment to Ms W's Barrister. From what I've seen it was made clear to ARAG why the payment of disbursements on an interim basis was both necessary and exceptional in this case by Ms W's Solicitors. The Barrister wasn't a panel Barrister and therefore didn't have any ongoing relationship with ARAG such that he might be persuaded to wait longer for payment. Equally the fee being claimed was for a cancelled trial and there was a risk the Barrister wouldn't act in the final trial if he remained unpaid. There were several emails from Ms W's Solicitor to ARAG explaining the situation and on each occasion, they were met with pushback from ARAG. They also invited ARAG to

discuss things so that matters could be resolved more easily but I can't see that that discussion took place. I appreciate this would have been both worrying and frustrating for Ms W particularly because she wanted to ensure her Barrister would act for her given ARAG had agreed to fund the claim. The delay in ARAG dealing effectively with this matter was for at least two months with payment following later. I agree that ARAG did not handle this matter effectively and within the time frame I would expect, particularly because the claim was approaching trial. As such I think they should compensate Ms W for this.

When considering the amount of compensation payable, I've also thought about Ms W's submission that the delay in paying the Barrister prejudiced her claim. But I've not seen anything to support this was the case. Whilst I appreciate her submission that her Barrister expressed to the Judge that he was instructed just three days before trial, I've not been provided with any evidence to support that she would have won her case, if it had not been for the Barrister being instructed so late in the proceedings. I would expect to see a fully reasoned legal opinion to support this. In the absence of that I can't determine that her loss is as she suggests, as I can't know whether the delay in the Barrister's instruction was a causal factor in her losing her claim. Because of this I think ARAG should compensate her for this delay by paying her £200 which is commensurate with awards we'd made in similar circumstances where there is undue delay and stress and inconvenience is caused to a policyholder in litigation as a result.

I can see that there was also a delay in ARAG paying the Barrister's invoice in January 2024. From what I've seen this invoice was presented in November 2024. ARAG asked some questions about the Solicitor's own costs in response to which those Solicitors responded in December 2024. Because of this I'm satisfied that the delay in making payment for Barrister's fees until January 2024 was unreasonable. For this reason, I agree that a payment of a further £100 should be made to Ms W to recognise the stress and frustration she would have experienced as a result of this delay. But for the same reasons I have set out above, I don't think ARAG need to do anything further because I haven't seen any evidence to support Ms W's assertion that her claim was prejudiced in the way that she says.

Ms W has said she's had to pay her Solicitors privately for costs incurred in chasing ARAG. Those costs aren't usually recoverable by a firm of Solicitors against an insurer, but I can't comment on the terms of a separate retainer Ms W would have entered into with her Solicitor which might have meant those costs were chargeable. I understand why this might have been- her indemnity limit had been exhausted part way through proceedings so Ms W was given a choice whether to pick up her Solicitor's costs herself, which she agreed to do. Given the question of costs charged by Ms W's Solicitor for corresponding with ARAG are likely subject to separate terms of retainer between them, it is not a matter I can reasonably comment on, save to say that those costs would have been covered by ARAG had indemnity extended to them. In this case given the indemnity paid was in the main in respect of Barrister's costs and not because ARAG did something wrong, I can't say they are responsible for Ms W's Solicitor's costs in chasing them for payment of her Barrister.

### **Putting things right**

In addition to the offer ARAG have made Ms W to pay her £100 for previous service failings, ARAG should also pay her £300 in compensation for the stress and inconvenience caused to her by their delays in agreeing to pay her Barrister and thereafter making payment to him.

In total ARAG should pay Ms W £400 in compensation.

### **My final decision**

I uphold Ms W's complaint against ARAG Legal Expenses Insurance Company Limited and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 12 November 2025.

Lale Hussein-Venn  
**Ombudsman**