

The complaint

Miss Z complains about the way ARAG Allgemeine Versicherungs-Aktiengesellschaft dealt with two claims on her legal expenses insurance policy.

What happened

The events leading to this complaint cover a long period and the details are well known to the parties. I will summarise the events as follows.

- In 2022 Miss Z made a claim on the policy for cover to pursue legal action against a car dealer about a car she had bought. ARAG initially declined the claim but then reviewed this and panel solicitors were appointed to act.
- The solicitors corresponded with Miss Z and sent a draft letter of claim for her approval. ARAG sought updates from the solicitors who said they were waiting for instructions from Miss Z on the letter. The relationship between Miss Z and the solicitors broke down and different solicitors were appointed. The new solicitors found out the dealer had gone into liquidation. They said it wasn't possible to pursue the claim against the dealer and they would advise ARAG of this.
- In a phone call in January 2024 ARAG indicated it would consider a making a payment to Miss Z relating to the value of the claim but then said this wasn't possible.
- Miss Z complained that delays by the solicitors and ARAG meant she had missed the opportunity to pursue her case against the dealer. In its response to the complaint ARAG said any delays it had caused were very limited and were not the reason Miss Z couldn't pursue the case against the dealer, but it paid £150 compensation for the distress caused.
- ARAG said the call handler had given the impression there would be a payment, but they only intended to pay cost of repairs - £1,800. Costs already paid were more than this and the prospects of success were then assessed to be less than 51%, so a payment wasn't made.
- Miss Z had made a second claim in September 2023 to defend a proposed legal action against her and pursue a counterclaim. ARAG appointed solicitors on 28 September. They advised there was no cover but after reviewing the claim, ARAG said cover was provided for the solicitors to continue. However, the relationship between the solicitors and Miss Z broke down.
- The solicitors sent a letter to the opponent seeking an extension for Miss Z to reply, to protect her position, and this was agreed. Another firm of solicitors was appointed.
- The new solicitors advised that Miss Z did not have reasonable prospects of defending the claim, but she might be able to counterclaim. ARAG said it would not provide cover if the defence did not have reasonable prospects.
- Miss Z obtained counsel's advice, which was favourable. ARAG referred this to the solicitors, who said they had advised on the basis Miss Z had not provided evidence supporting her case but perhaps she had provided this to counsel. ARAG said it would ask the solicitors to obtain a further counsel's opinion. It asked Miss Z for

copies of the information she had provided to counsel but this wasn't received.

- Miss Z complained that the delays meant she had lost the opportunity to pursue her case and to take advantage of a government scheme to cover costs claimed against her. ARAG said any delays were short; there was a very short period between receiving counsel's advice and the deadline for the government scheme; it had not been aware of that deadline but even if it had been, it would not have had time to deal with the claim.
- ARAG said it was entitled to ask solicitors to review her counsel's advice and obtain its own advice but there was some delay relating to that. ARAG offered compensation for this delay. Miss Z was asked to provide information, including the information she had provided to her counsel, so it could review the claim.
- On the first claim, our investigator said ARAG wasn't responsible for the fact Miss Z couldn't pursue the claim against a company that had been dissolved, and the compensation of £150 for the delays was fair. She said it was reasonable not to pay the value of that claim. But Miss Z had been led to believe a payment would be made. She asked ARAG to pay a further £150 compensation for the loss of expectation in relation to this.
- On the second claim, the investigator said it was in line with the policy terms for ARAG to seek a further counsel's opinion. There had been some delay but the compensation ARAG had offered was fair.

ARAG accepted the investigator's view but Miss Z disagrees and has requested an ombudsman's 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.

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. They should settle claims promptly once settlement terms are agreed. The starting point when considering this is the policy terms; these set out the terms of the insurance contract between Miss Z and ARAG.

The policy terms say cover will be provided if a claim has reasonable prospects of success. This is a requirement of almost all legal expenses insurance and I think it'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 they can rely on that advice unless it's obviously wrong. They are entitled to keep this under review as a case progresses.

The policy terms also say ARAG may require the customer to obtain and pay for a barrister's opinion if there's a dispute about the merits of the claim. If that advice is favourable, ARAG will reimburse the cost, and then obtain a final opinion, which will be binding.

Miss Z says ARAG admitted the panel solicitors held things up, and the evidence shows ARAG made numerous errors with the claims. ARAG also agreed to pay the value of the first claim but didn't then make a payment. She says she has lost out as a result of the delays and poor claim handling, which prevented her from pursuing either case.

Miss Z asked if she could speak to the ombudsman. We have received extensive comments and documents, and I've reviewed all the evidence on the file. I'm satisfied I am able to make a decision based on all the evidence I've considered.

Miss Z found herself involved in two legal disputes. It then took time for her claims to be assessed and for solicitors to deal with the legal action. I appreciate this has been a very difficult time for her and I've considered her comments carefully, but I don't think the evidence shows ARAG is responsible for all the issues she complains about, for the following reasons:

- On the first claim, any initial delay was due to checking the claim was covered by the policy. The solicitors questioned this and it was reasonable for ARAG to review it carefully. In June 2022 ARAG confirmed cover would continue. While there were some short periods of delay in the initial handling of the claim, ARAG paid some compensation for that.
- ARAG was responsible for dealing with the claim on the insurance policy, deciding whether cover should be provided, and then underwriting the legal costs. Once solicitors are appointed to act, they are responsible for handling the legal case. There is a direct solicitor-client relationship, and the insurer isn't responsible for how solicitors manage the litigation. I can't comment on the solicitors' actions and can only consider how ARAG dealt with the insurance claim.
- The solicitors corresponded with Miss Z and sent a draft letter for her approval. ARAG sought updates from time to time, which is what I'd expect them to do. In September 2022 the solicitors said they had information from Miss Z which they were reviewing. In January 2023 they advised they were waiting for instructions from Miss Z on a draft letter they had sent to her in November 2022. In July 2023 they were waiting to hear from her on a third draft of the letter. ARAG wasn't responsible for any delays in relation to this.
- The relationship between Miss Z and the solicitors broke down. ARAG wasn't responsible for that and responded in a reasonable way, arranging for another firm of solicitors to be appointed. The new solicitors then found out the dealer had gone into liquidation in December 2022. As the company had been dissolved it wasn't possible to pursue the claim against them. That was of course extremely disappointing for Miss Z, but she wasn't left in this position due to failings by ARAG.
- The solicitors advised Miss Z the defendant had been dissolved, there was no claim to pursue and the insurer had been informed of this. ARAG didn't write to confirm cover had been withdrawn, but she was aware of this from what the solicitors had said.
- At the time the company was wound up, the solicitors were in the process of agreeing a letter of claim with Miss Z in accordance with the pre-action protocol. Her case was being progressed and ARAG wasn't responsible for the fact the company went into liquidation or the fact she was unable to pursue her claim.
- Any delays by ARAG were limited and, even if there had been no delays, it's unlikely she would have been able to get the case to court and enforce any judgment (if successful) before the company was wound up.
- Where there was a failing was in the phone call with Miss Z, where the call handler indicated ARAG would pay the value of the claim.
- Insurers sometimes agree to do this where a claim has prospects of success but the costs are likely to be more than the claim is worth, meaning it's not proportionate to pursue the case. The policy says ARAG can settle by paying the reasonable value of the claim but this is discretionary – it's not something Miss Z was entitled to. And, as I've said, it's done where a claim is likely to succeed but the costs are more than the value of the claim. As the legal advice was that the claim was not likely to be successful, it was reasonable not to pay the value of the claim.

- But the information given to Miss Z wasn't clear and she had an expectation a payment might be made. It was disappointing to then find that wasn't the case. I agree a payment of £150 to compensate for the shock of finding this out would be reasonable.
- On the second claim, ARAG appointed panel solicitors on 28 September 2023 but their initial view was that there was no cover. Miss Z was unhappy but after reviewing this, cover was provided for the solicitors to continue. The relationship between the solicitors and Miss Z then broke down. The solicitors obtained an extension for Miss Z reply to the other party, to protect her position. I don't think there were any failings by ARAG in relation to this.
- Another firm of solicitors was appointed in October 2023. They advised that Miss Z did not have reasonable prospects of defending the claim, but she might be able to counterclaim. ARAG said it would not provide cover if the defence did not have reasonable prospects. Under the policy terms, a claim will only be covered if there are reasonable prospects of success so, given the legal advice was she didn't have reasonable prospects, it was fair to say cover would not continue.
- Miss Z obtained counsel's advice, which said she did have reasonable prospects of defending the claim. ARAG said the panel firm would need to review this. That's in line with the policy terms.
- The solicitors said they had given their advice on the basis Miss Z had not provided evidence supporting her case but perhaps she had provided evidence to counsel. ARAG said it would ask the solicitors to obtain a further counsel's opinion, in line with the policy terms. ARAG also said it would find a new firm of solicitors to deal with this, who would consider if there were any other options available to provide assistance or seek a positive outcome for Miss Z. ARAG asked Miss Z to provide the further evidence requested to assist with this, but this wasn't received.
- Where someone has a barrister's opinion supporting their claim, I wouldn't generally expect an insurer to insist on getting further advice. But in this case, the solicitors said Miss Z hadn't provided evidence to support what she said. They said the barrister might have been given different evidence, which would explain the different advice. It was reasonable in these circumstances to request that evidence from Miss Z, to review this and consider obtaining further advice based on that. This was in line with the policy terms. And ARAG offered to find solicitors who could explore other options.
- As I understand it, Miss Z hasn't provided that evidence. So ARAG hasn't had the chance to review this and seek further advice. If she does provide further information and this leads to a further opinion being obtained, which she's unhappy with, Miss Z can make a further complaint about that. On the position as it currently stands, I don't think the way ARAG approached this was unreasonable in the particular circumstances here.
- Miss Z complained that the delays meant she had lost the opportunity to take advantage of a government grant to settle the sums claimed by the opponent and she couldn't pursue a complaint about misuse of her data by the opponent.
- Any delays by ARAG were very limited and I'm not persuaded she was prevented from taking any action as a result. There was a very short period (a few weeks, which ran over the Christmas period) between receiving counsel's advice and the deadline for the government scheme. ARAG had not been aware of that deadline – but even if it had been, it's unlikely there would have been time to deal with the claim. Miss Z could have made it aware of the deadline, and taken steps to protect her position in the meantime.

In its final response sent on 20 May 2024 ARAG offered two compensation payments – of £850 and £270 (totalling £1,120). I understand Miss Z didn't accept the offer. As I've explained, dealing with the two legal disputes and related insurance claims has been difficult for Miss Z. But much of what happened was outside ARAG's control. Where there were some delays that no doubt added to her distress but, taking into account the time involved and the impact on her, I think the compensation ARAG offered was fair.

In addition it should also pay compensation for the upset in relation the proposal to pay the value of the first claim. Our investigator recommended a payment of £150 for this, which ARAG accepted, and I think that is a fair amount. So ARAG should pay this in addition to the compensation offered previously for delays.

My final decision

My decision is that ARAG Allgemeine Versicherungs-Aktiengesellschaft should pay compensation to Miss Z for the distress and inconvenience caused to her as follows:

- the total of £1,120 previously offered; and
- a further payment of £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or reject my decision before 31 December 2025.

Peter Whiteley
Ombudsman