

The complaint

Mrs B and Mr E complain about the handling of a legal expenses insurance claim by ARAG Legal Expenses Insurance Company Limited (ARAG).

While Mrs B and Mr E refer the complaint as joint policyholders, the claim was made by Mr E and he's been the party who's been in contact with our service. I'll therefore refer to Mr E in my decision, but where appropriate this should be taken to include Mrs B.

What happened

Mr E holds legal expenses insurance cover with ARAG. He's sought to use the cover to make legal claims against a number of parties in respect of an employment dispute. The details of those claims and the underlying dispute aren't relevant to my decision here. Those matters have been ongoing for a number of years, and Mr E's previously referred complaints about ARAG's handling of the claims to our service.

In May 2023, a barrister provided an assessment of the prospects of success of Mr E's claims against two other parties. They concluded Mr E's claims didn't have reasonable prospects of success. Mr E didn't agree with this and believed that advice should be sought from another barrister, which would include an assessment of all the claims he was seeking to advance.

In May 2024, ARAG said it wouldn't obtain a further opinion as it was satisfied it could rely on the earlier assessment. Mr E complained, saying ARAG had agreed and he'd been promised that a further opinion would be obtained.

ARAG said it remained satisfied the earlier opinion was suitably reasoned and could be fairly relied on, but did acknowledge there had been delays and poor communication between May 2023 and May 2024. It offered £500 compensation to recognise this.

Mr E referred the complaint to our service. Our investigator thought ARAG's offer of compensation was fair. Mr E disagreed, and asked for 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.

ARAG has a duty to handle claims promptly and fairly. It also shouldn't unreasonably decline cover for claims. Mr E's claim has a number of elements to it, including legal action against solicitors who'd represented him. In May 2023, a barrister provided an opinion on a number (but not all) of his claims, and concluded that they didn't have reasonable prospects of success. It's a condition of the policy that in order for cover to be in place, and remain in place, that the claim has a more than 50% chance of being successful. These conditions are common in legal expenses insurance policies and not inherently unfair or onerous. It would be unreasonable to expect an insurer to fund a legal action which isn't considered to be likely to be successful.

Mr E doesn't dispute that the claims need to have reasonable prospects of success for cover to remain in place, but says the barrister's opinion was flawed and a further opinion should have been obtained, which could have indicated there were reasonable prospects.

After the initial opinion, Mr E explained that he didn't think the barrister had been able to give a complete assessment of all his claims because material related to the other claims hadn't been available. Another claim was being handled by different solicitors, and the barrister hadn't been asked to assess that claim. He was of the view that a further barrister should be appointed to consider all of the claims.

Mr E believes that ARAG agreed and promised that a barrister would consider all the claims together. He says this constituted a variation of the contract of insurance, and so ARAG is bound by that variation to obtain that opinion. However, I think a more reasonable interpretation of such an undertaking (if that's what ARAG did) is that it would be in line with ARAG's obligation to handle claims fairly.

If ARAG had said it was going to obtain a further assessment as part of the claim process, then it should do this. Whether it's a contract variation or a part of claims handling, ARAG should do what it says it will do. It seems that what I need to do is assess whether, in my opinion, ARAG made such a promise.

On 4 September 2025, Mr E spoke with ARAG by telephone. Unfortunately, a recording of this call isn't available. Mr E's belief following this call was that ARAG was going to arrange for a barrister to reconsider all of the claims in one assessment to determine whether they had reasonable prospects of success. That's supported by his emails in the period after the call where he refers to wanting to discuss the matters with the barrister who would be appointed. I'm also conscious this was something Mr E had been asking about since the initial assessment was completed in May 2023. I haven't seen any evidence that prior to September 2023, ARAG had agreed that all the claims would be reconsidered afresh by a new barrister.

ARAG's notes of the call itself say that it was agreed ARAG would speak to the solicitors to discuss if all the cases should be dealt with together, and if so then they would ask one firm of solicitors to take these forward. In an email sent to Mr E on 5 September, ARAG said they would be discussing a way forward with the solicitors.

Based on the call note and that email, I don't believe I can safely conclude that Mr E was promised that a further barrister's assessment would be obtained. My interpretation of this information is that ARAG would discuss the claims with the solicitors, and consider the possibility and merits of having all the claims handled by one solicitor, and thereafter look at whether a further assessment of the prospects of success would be beneficial.

One other significant piece of evidence is in a letter sent to Mr E in November 2023, which covers a number of points, including the ongoing assessment of the claim. This says "Our Claims Team are consulting with [the solicitors] to facilitate a way forward. I agree that it would be beneficial to obtain a further written opinion from a barrister, who has full sight of relevant evidence, to provide their assessment on the four claims... Our claims team will continue to facilitate this step and update you accordingly."

On the face of it, this could be considered a promise to obtain a further assessment, but I think the context is important here. As I've outlined above, I'm satisfied ARAG's position from the call and earlier emails was that there would be a discussion with the solicitors about taking all the cases on together, and then a further assessment from a barrister could be sought once the solicitor had obtained and reviewed all of the information. With that in mind, the comment that it would be "beneficial" to obtain a further assessment would seem to be in

line with ARAG's position, but that relied on further discussion and consideration involving the solicitors.

ARAG approached solicitors about taking on all of the claims (with, presumably, a view to them assessing whether a further barrister's opinion should be obtained) but the solicitors indicated they didn't have capacity to take on further claims. ARAG then reviewed the information available, and said it wouldn't fund a further barrister's assessment.

When it made that determination, it relied on the earlier barrister's opinion which identified an identified that there were breaks in the chain of causation, making it difficult to link alleged failures to the losses claimed. The barrister had said that even if there was a breach of duty on the other claims (which he hadn't assessed or had sight of supporting material), the issues around causation would remain.

I know Mr E believes that a further barrister's assessment, encompassing all of the claims, would have addressed the causation issue. However, ARAG has plainly taken the view that the causation issue would exist across all of the claims, as it goes to the heart of the matters Mr E was claiming for. It takes the view that combining the claims, and a further assessment, isn't going to change that.

We don't expect insurers to be legal experts, and normally say it's fair for an insurer to rely on a properly reasoned assessment from a suitably qualified professional, unless there are facts within that opinion which would be obviously wrong to a layperson. While Mr E believes the assessment to be wrong, and incomplete as it doesn't address all his claims, I haven't seen any evidence that it would be unreasonable for ARAG to rely on that opinion. While he says there are errors, it seems to me that these are based on an interpretation of what's happened and Mr E's contention that the material related to the other claim would change the outcome.

I also think it was reasonable for ARAG to determine that irrespective of a further opinion or the combining of all the claims, the issue of causation would remain. I'm satisfied it properly reviewed the timeline and details of the claim and determined that the additional information or context that would be provided by combining the claims wouldn't remove the question around causation. The causation issue was set out in the barrister's opinion, which I'm satisfied was properly reasoned and didn't rely on any obviously wrong facts. I think therefore that it acted reasonably when it declined to obtain a further opinion on the prospects of success.

ARAG was entitled to withdraw funding for the claim as it had been concluded that the claim didn't have reasonable prospects of success, and no alternative opinion had been provided to indicate that cover should be reinstated.

This isn't to say that ARAG handled the claim appropriately. As I've set out above, ARAG should handle claims promptly, and there's ample evidence that this wasn't the case here. The first barrister's opinion was provided in May 2023. In September 2023 ARAG said it would approach the solicitors to discuss combining the cases and potentially obtaining a further opinion. It wasn't until May 2024 that Mr E was told ARAG wouldn't be funding a second barrister's opinion and that its stance from May 2023 was unchanged.

During this time, Mr E was in regular contact with ARAG but there was very little in the way of pro-active updates to him about what was happening. There also seems to have been insufficient contact with the solicitors to ask for updates on their progress or decisions around taking on and combining the cases. It's clear ARAG knew how important this matter was (and remains) to Mr E, that the legal proceedings linked to the claims were ongoing and the impact of these matters on his health. However, ARAG didn't seem to treat the matter

with the urgency that it merited. Communication with Mr E was poor and there were unnecessary delays.

I've considered whether the lack of action on ARAG's part contributed to Mr E's decision to continue pursuing legal proceedings against one of the other parties, including amending the action. The legal action was ultimately unsuccessful and costs were awarded against Mr E. I don't believe I can conclude that he only continued with this claim because of the poor communication and delays from ARAG.

I can't say there had been any impression given after May 2023 that Mr E's costs in respect of this action would be covered. Indeed, the barrister's assessment was that the claim didn't have reasonable prospects of success, and despite no positive assessment being obtained or even suggested, Mr E made the decision to continue with the proceedings. I don't think I can conclude that Mr E decided to continue, or amend, the legal action based on ARAG's advice or actions.

I'm satisfied that, notwithstanding the possibility of a further assessment being suggested (but not promised, as I've outlined above), Mr E assumed the risk in continuing to pursue that claim. He'd been told that the claim didn't have reasonable prospects of success, and no other assessment or opinion had been obtained which suggested anything different. I can't ask ARAG to meet the costs in respect of that unsuccessful claim.

ARAG did provide poor service during the period I've highlighted above. It's recognised this and offered £500 compensation to acknowledge the distress and inconvenience caused to him. I have to separate this from the disappointment and upset he experienced when told ARAG wouldn't fund a further assessment, As I've outlined above, I think this was reasonable. It's also distinct from the upset he suffered when his claim wasn't successful in court.

I acknowledge that there were complexities to the claim and that it was likely to require a review of significant amounts of information on ARAG's part. It's also apparent that ARAG wasn't receiving updates or answers from the solicitors, but I think it could have been more pro-active in chasing the solicitors for responses.

Overall, I think that there were delays which meant this took several months longer than it should have to provide an answer to Mr E (albeit a reasonable one which he didn't agree with) and that during that period there was a lack of suitable communication about the actions being taken to progress the matter. On balance, I think the £500 compensation offered by ARAG suitably recognises the impact of its service failings. I don't think it was an unreasonable offer or that I should ask it to pay more.

My final decision

ARAG Legal Expenses Insurance Company Limited's offer of £500 compensation for the poor service was reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr E to accept or reject my decision before 31 December 2025.

Ben Williams
Ombudsman