

The complaint

Ms B who is a trustee of a trust, which I will refer to as T, has complained about the rejection of a claim made under its Landlords Legal Protection cover with ARAG Legal Expenses Insurance Company Limited trading as DAS.

What happened

A letting property is held as an asset of the trust. The property has been let out since June 2019. The tenant moved out in January 2024. In May 2024, Ms B contacted ARAG to register a claim for the legal costs of recovering rent arrears.

ARAG rejected the claim. ARAG said there were two reasons for the refusal of the claim in relation to the rent. Firstly, it said the rent arrears had started before the start of the insurance policy. Secondly, it said the policy only covers residential properties and this was a commercial lease, as the tenant wanted to operate the property as a children's home.

As Ms B was unhappy with this, she complained about the rejection of the claim and delays on ARAG's part in considering the claim.

ARAG did not change its position about the claim, but it did acknowledge there had been some delays in dealing with the claim and offered £200 compensation for this.

As Ms B remained unhappy with ARAG's response to her complaint, she referred the matter to us.

Ms B says she has had continuous legal protection cover since February 2019 and also says the property was never used as a children's home. Ms B also says the handling of the claim has caused her financial and emotional stress and the delays in her claim being met is causing continuing injustice.

Since the complaint was referred to us, ARAG also told us it considers that as well as the two reasons set out above, it would have been able to reject the claim as it had been reported late. It says the arrears started to accrue in 2019 and the claim was only notified in 2024. Recovery of historic debt is more difficult, and the fees involved will be higher the larger the debt. This means it will have been prejudiced by the late reporting.

ARAG also told us that it provided insurance from February 2019 to February 2021 but the legal protection cover was added as a mid-term adjustment in October 2019 and the arrears started in September 2019. A different insurer then provided cover until it provided another policy starting October 2023 to October 2024.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied ARAG was entitled to reject the claim for the reasons it had and that it also would have been able to rely on the policy terms that required Ms B to report the rent arrears a lot earlier than she had.

Ms B does not accept the Investigator's assessment, so the matter has been referred to me.

Ms B has made a number of points in response to the Investigator. I have considered everything she has said and have summarised her main points below:

- There was no certainty the property would be used as a children's home, as there were hurdles to overcome before getting permission to do so. The tenancy agreement was written with this in mind.
- She told this to the broker and was told to notify them if permission was granted.
- Permission was not obtained, as the property had a restriction prohibiting it from becoming a children's home.
- In the end, the tenant lived at the property with his family, so it was used for residential purposes.
- She had agreed with the tenant he could pay reduced rent, as he had not been able to get permission to operate the property as a children's home. She intended to recover the shortfall from her conveyancing solicitors who had not alerted her to the restriction on the property.
- The rent was not therefore in arrears until 2023, when she told the tenant he needed to pay the rent payments due, as she had not been able to recover it from her solicitors. The reduction of rent had only been agreed on the basis she get the payments as compensation from her solicitors.
- She reported the claim as soon as she knew of it. There were no arrears until 2023, so she had no claim to report until then.
- She was insured by ARAG at the time she asked the tenant to pay the rent due.
- And in any case, she paid for legal cover from February 2019 to February 2020.

The Investigator explained that any complaint about anything done, or not done, by the broker, would have to be looked at separately. I am only considering whether ARAG, as the insurer, has handled the claim fairly and reasonably and in line with the policy terms, in this 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 insurance policy held by T provides cover for various legal disputes that may arise with a letting property. The sections of cover relevant to this complaint are as follows:

"Rent recovery

Costs and expenses to recover rent owed by your tenant for your property if it has been overdue for at least one calendar month."

And:

"Tenant default

We will:

(a) Pay your rent arrears while your tenant, or ex tenant still occupies your

property...

- (b) If after vacant possession your property needs damage repaired to enable you to re-let it, we will pay 50% of your rent arrears for a maximum of three months or until your property is re-let, whichever happens first”.*

“Your property” is defined in the policy as being “the property you have told us about used for residential purposes only”.

As with any insurance policy, this cover is subject to various terms and conditions. Relevant to this complaint is the following:

“We agree to provide the insurance described in this policy for you, in return for payment of the premium and subject to the terms, conditions, exclusions and limitations set out in this policy, provided that:

- 1 reasonable prospects exist for the duration of the claim*
- 2 the date of occurrence of the insured incident is during the period of insurance*
- 3 any claim is reported to us during the period of insurance and as soon as you become aware of an incident which could give rise to a claim.”*

“Date of occurrence” is defined in the policy as: “For insured incident 5 Tenant default, the first date that any of the rent due under the terms of the tenancy agreement ... is not paid, unless this event and any other event leading to a claim have arisen from the same originating causes, in which case the date of occurrence will be the first of these events”.

There is also a general exclusion in the policy for *“any claim reported to us more than 90 days after the date you should have known about the insured incident”.*

Is the claim excluded as it was not a residential tenancy?

From the information I have seen, the tenant occupied the property with the intention of operating it as a children’s home. However, when he applied for authorisation to do this it was refused as there was a restriction on the property prohibiting its use as a children’s home. This was apparently in October 2019 and the tenant told Ms B he could not pay the rent as a result of this.

Ms B says the property was therefore never actually used as a children’s home and was occupied by the tenant and his family as their own private home.

I can see some force in Ms B’s argument as the property was used for residential purposes only. However, it seems this was by chance rather than by design. I have read the tenancy agreement and it was entered into for the purpose of a children’s home and the rent arrears have arisen because that was not possible.

Having considered everything carefully, I think it is clear the property was intended to be used as a commercial purposes and not for a private residence. I am satisfied therefore that ARAG was entitled to rely on this term to reject the claim.

However, even if for argument’s sake I am wrong about this, I do not think the claim would be covered for the other reasons ARAG has relied on. I will explain why below.

Did the claim arise during the period of cover?

The policy only covers events that occur within the period of cover and also specifies that for tenant default cover this would be considered to be *“the first date that any of the rent due under the terms of the tenancy agreement”* is not paid.

Ms B says she paid for legal protection cover from February 2019. However, ARAG has provided evidence that the legal protection cover was added to the policy in October 2019.

I can see from the rent schedules provided that the first date that the rent payment was short was September 2019 and it appears no rent was paid in October 2019. From then on, the full rent was not received for the entire time the tenant occupied the property until leaving in January 2024.

Ms B said there were no rent arrears until 2023, when she realised she had no claim against the solicitors. I do not agree. In my opinion, the fact Ms B thought she may have been able to recover the rent from another party does not change the date the rent fell due under the terms of the tenancy agreement. The rent was payable by the tenant and the first arrears accrued in September 2019, before the start of this policy with ARAG. I am therefore satisfied that ARAG was entitled to reject the claim on the basis that it did not occur within the period of the insurance cover.

Was the claim reported late?

In addition to the above, ARAG says that the claim was also notified late. As set out above, the policy requires prompt notification of any insured incident, and says claims not notified within 90 days of the policyholder becoming aware of them will be excluded.

I am satisfied that the rent arrears started in September 2019 and I therefore consider this is the date that Ms B became aware, or should have become aware, of the insured incident. The claim was not notified to ARAG until May 2024. This is clearly significantly outside the 90 day period.

I think it is reasonable to conclude that this delay has prejudiced any chance of recovering the rent owed and therefore, even if the other reasons for rejecting the claim for rent recovery set out above did not apply, I think ARAG would have been entitled to reject cover on this basis too.

Handling of the claim

Ms B was also unhappy with the handling of the claim and that she had to chase ARAG several times. ARAG has acknowledged this and offered £200 compensation. Having considered everything carefully, I think this is fair and reasonable. Ms B says she has not had the £200 compensation offered.

My final decision

ARAG Legal Expenses Insurance Company Limited trading as DAS has already made an offer to pay £200 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that ARAG Legal Expenses Insurance Company Limited trading as DAS should pay £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask T and Ms B to accept or reject my decision before 29 December 2025.

Harriet McCarthy
Ombudsman