

The complaint

Mr and Mrs G are unhappy with what ARAG Legal Expenses Insurance Company Limited did after they made a claim on the legal expenses section of their property investor's insurance policy.

What happened

In February 2024 Mr and Mrs G sought assistance from their policy. They wanted to pursue a claim for rent and service charge arrears and dilapidations against former tenants of their commercial property. ARAG said the arrears had begun prior to the policy being taken out and it didn't cover claims where that was the case. It accepted the claim for dilapidations could be covered and referred that to a firm of panel solicitors.

The firm advised the claim enjoyed reasonable prospects of recovery against two of the three tenants but it would be better to pursue all elements together. ARAG said it wouldn't fund the arrears claim but Mr and Mrs G could pay for that privately. At the end of July (having returned from abroad) Mr and Mrs G said two of the tenants had entered into Individual Voluntary Arrangements (IVAs). The panel firm said that meant there were no longer prospects of successfully pursuing a legal claim against any of the tenants.

Mr and Mrs G asked ARAG whether they could obtain advice from a specialist lawyer about challenging the IVA (which needed to be done by the end of July). On 29 July they said they'd been advised they couldn't pursue a claim against the tenants in the IVA's and there wasn't time to challenge these. They asked whether ARAG would fund a claim against the third tenant who they believed was the part owner of a property.

Following further contact from Mr and Mrs G ARAG said at the end of August it wouldn't be funding their claim as the panel firm had advised it didn't enjoy reasonable prospects of recovery. However, if Mr and Mrs G were able to evidence the third tenant could pay any debt it would ask them to reassess. It accepted there had been delay and poor communication in its handling of the claim and offered to pay a total of £200 in recognition of the impact of that.

Our investigator thought ARAG fairly declined the arrears claim. And it had reasonably declined to fund the dilapidations claim given the negative prospects assessment from the panel solicitors. She agreed there had been handling issues by ARAG, in particular not responding to queries raised at the end of July. She didn't think an earlier response would have led Mr and Mrs G to act differently but said it should pay them a further £75.

ARAG agreed to do so. Mr and Mrs G didn't agree. In summary they said:

- Their policy should have covered them for a loss of rent claim relating to the period in which their policy with ARAG was in force and they explained the circumstances which had led those arrears to accrue. If the policy didn't cover that it didn't meet their needs and they hadn't been provided with clear information about this when it was sold.

- The service ARAG provided had fallen short of an acceptable standard and in particular it wasn't reasonable of it to take a month to respond to the urgent request they made at the end of July. The delay by ARAG prevented them from challenging the IVA's by the required deadline; if it had responded sooner they would have had time to do that.
- The panel firm appointed by ARAG hadn't provided service to an acceptable standard or acted in their best interests. It hadn't acted on their instructions to proceed with the claim and there hadn't been timely communication between ARAG and that firm.
- The relationship between ARAG and the panel firm meant it was difficult for customers to navigate who was responsible for what. They thought it was unfair they hadn't been offered a choice of legal firms. And they raised concerns as to whether ARAG's actions were in line with relevant Financial Conduct Authority (FCA) 'Principles of Business'.

So I need to reach a final 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 rules and industry guidelines say ARAG has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. Mr and Mrs G have also referred to the FCA's 'Principles of Business'. I've taken those into account as applicable when deciding what's fair and reasonable in all of the circumstances.

I understand Mr and Mrs G have found it difficult to understand the different responsibilities of ARAG and the panel firm in dealing with their claim. However, it's only the actions of ARAG I can consider in this decision and those are ones that relate to the carrying out of their contract of insurance with it. I can't consider the actions of the panel firm when acting in its legal capacity. So concerns Mr and Mrs G has about, for example, delay by that firm in progressing their claim aren't something I can look at. I'm aware Mr and Mrs G have raised those issues separately with that firm and the Legal Ombudsman.

In relation to what ARAG did I've thought first about whether it acted fairly in declining the arrears element of Mr and Mrs G's claim. I don't think it's in dispute that a legal claim against their tenants is something that would fall within one of the insured events set out in their policy. So the associated legal costs are something it could potentially cover.

However, it a condition of cover that the 'date of occurrence' of the insured incident is during the period of insurance. ARAG says Mr and Mrs G's policy with it didn't begin until March 2022. And the policy defines date of occurrence as "*For civil cases (other than under insured incident Tax protection), the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, the date of occurrence is the date of the first of these events. (This is the date the event happened, which may be before the date you or an insured person first became aware of it.)*".

In this case the tenancy of Mr and Mrs G's property began in January 2018 and the tenants arrears began that year. It's those and subsequent arrears that have led to the claim they subsequently made on their policy. Mr and Mrs G have suggested they had legal expenses cover with ARAG from 2019. However, I haven't seen clear evidence of that; both the insurer of Mr and Mrs G's main policy and their broker are recorded as saying they didn't have legal expenses cover with ARAG prior to 2022.

I note the points Mr and Mrs G have made about the reasons why they didn't seek recovery of the arrears at an earlier date. I also appreciate the Covid-19 pandemic could have impacted the tenant's ability to make payment. But I don't think that's directly relevant here. Any impact from the pandemic could only apply from March 2020 (when restrictions were first imposed in the UK). Based on the rent schedule provided to ARAG the tenants were already in reasonably substantial arrears after the first year of their tenancy and those increased year on year following that.

I think it's therefore fair of ARAG to have declined this claim on the basis the issue giving rise to it began prior to this policy being taken out. Mr and Mrs G have subsequently provided a different rent schedule to us to that supplied to ARAG. If they think this changes the decision it reached on 'date of occurrence' they'll need to provide this to it. And if they have concerns about what happened when this policy was sold they'll need to raise those separately with the business responsible for the sale.

Turning to the claim Mr and Mrs G made for dilapidations that's also something their policy could cover (it's accepted the 'date of occurrence' was within the policy term). However, it's a condition for cover to be provided that a claim must have reasonable prospects of success. The policy says that means "*the prospects that the insured person will recover losses or damages or a reduction in tax or National Insurance liabilities (or obtain any other legal remedy that we have agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%*".

As an insurer isn't a legal expert our long standing approach is that assessment should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. So I think it was right in this case ARAG referred the matter to a panel firm so that could be considered.

Mr and Mrs G say they should have been offered a choice of legal firms. The policy says they have the right to choose their own solicitor where "*it is necessary to go to court and legal proceedings are issued or there is a conflict of interest*". And the relevant regulations say that where "*recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)*". Our approach is that would apply where negotiations have failed and it's necessary to issue formal action to progress the legal case. Mr and Mrs G's case hadn't reached that stage so that wouldn't apply here.

I understand having carried out a trace report the panel firm was satisfied there were reasonable prospects of success (and recovery) against two of the tenants but not against the third. However, the position on that changed after those two tenants entered into IVA's. That led the panel firm to advise Mr and Mrs G (and ARAG) there were no longer prospects of recovery against any of the tenants. ARAG relied on that opinion when withdrawing funding for the claim. However, it doesn't appear to have obtained a copy of the trace report that was based on before doing so. And in order to satisfy itself the opinion from the panel firm was factually correct I think that's something it should have done.

However, I don't think Mr and Mrs G have lost out because that didn't happen. They subsequently argued a claim could be pursued against the third tenant as she had an interest in a property. In its final response to their complaint ARAG explained if they were able to provide evidence of that it would ask the panel firm to reassess the claim. I think that provided a mechanism to put right the failing I've identified and it doesn't appear Mr and Mrs G have provided any further information. If they are able to do so I'd expect ARAG to refer the matter back to the panel firm for further consideration.

Looking at the overall journey of Mr and Mrs G's claim with ARAG I do agree there was delay and poor communication which it was responsible for. ARAG has accepted it didn't confirm to the panel firm until April 2024 it wouldn't be funding the arrears claim. However, I don't think that delay meant the correct debt wasn't included in the IVA's the tenants subsequently entered into. A claim could still have been issued against them by the panel firm well in advance of the IVA proceedings. The reasons that didn't happen aren't something ARAG is responsible for; they form part of the separate complaint Mr and Mrs G have made against the panel firm.

ARAG clearly should have responded significantly earlier to the contact Mr and Mrs G made at the end of July about the IVA's. However, I'm not satisfied if it had responded within a reasonable timeframe they would have acted any differently. If it had done ARAG would have likely confirmed it wouldn't be funding their claim (because it no longer enjoyed reasonable prospects of recovery) but they were free to seek their own legal advice on how to challenge the IVA's.

Mr and Mrs G contacted ARAG on Friday 26 July 2024. And they'd already sought specialist advice by the time they got in touch with it again the following Monday. The email they then sent said "*we have been advised we can no longer put in a claim against [tenants] as their recent IVAs prevents us from doing so... and we have no time to challenge the IVA's*". The question they then asked was whether a claim could be pursued against the third tenant. When ARAG did eventually respond to that it explained it would need further evidence the tenant had an interest in a property for further action to be taken. As that doesn't appear to have been provided, I'm not satisfied the position would have been any different even if ARAG had responded earlier.

I do accept the delays by ARAG will have caused Mr and Mrs G avoidable distress and inconvenience at a time when they were already experiencing significant stress as a result of the issues at their commercial property. I also accept its failure to respond at the end of July will have been particularly upsetting given they had urgent decisions to make about the next steps with their claim. However, I'm mindful of the fact that for much of the claim period the matter was with the panel firm to progress and ARAG isn't responsible for its actions. Taking all of that into account I think the total compensation of £275 our investigator recommended is a reasonable way of recognising the impact on Mr and Mrs G of what ARAG got wrong.

My final decision

I've decided to uphold this complaint. ARAG Legal Expenses Insurance Company Limited will need to put things right by paying Mr and Mrs G a total of £275 (if it hasn't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 9 January 2026.

James Park
Ombudsman