

The complaint

The estate of Mr K has complained about ARAG Legal Expenses Insurance Company Limited's rejection of a claim under the legal expenses section of a household insurance policy.

The estate of Mr K is represented by one of the executors, also Mr K, so I will refer to him as Mr K2.

What happened

Mr K owned a leasehold property, which formed part of his estate after he passed in 2024. Mr K2 is an executor of the estate and also a beneficiary. As a result, he has since become the registered owner of the leasehold property.

In early 2025, while dealing with the estate, and before the property was transferred to Mr K2, he became aware of plans by the owner of another leasehold property in the building to obtain a sub-lease over a communal area. Mr K2 says this would impact the value of the property. Mr K2 also said the management company of the building would not recognise his right to be consulted about the matter, as he was not the registered owner.

Mr K2 contacted the legal helpline included with the policy for advice and was referred to make a claim for legal assistance from ARAG.

ARAG rejected the claim because it said there was no cover under the property disputes section of the policy for action to establish rights Mr K2 may or not have, or to take preventative measures. Mr K2 did not own the property and the policy was only intended to provide cover once certain established rights had been infringed.

Mr K2 did not accept this and complained. He said the policy covers up to £100,000 in legal expenses, to include the cost of negotiating and defending the policyholder's rights about legal issues. He asked ARAG to reconsider the claim.

ARAG didn't change its mind about the claim. It said that in addition to the previous reasons for rejecting the claim, the property section of the policy excludes any claim relating to a contract entered into by the policyholder and as this was about a lease agreement it would be about a contract, so it would be rejected for this reason also.

ARAG also said in its final response letter to the complaint that it had considered whether there would be cover under the contract disputes section of the policy but this excludes claims relating to a lease, license, or tenancy of and or building, so it would not be covered under this section of the policy either.

As ARAG did not change its position, Mr K2 referred the complaint to us. He says he had to get urgent legal assistance, so incurred costs with his own solicitors that he wants reimbursed and cover for future costs.

One of our Investigators looked into the matter. She did not recommend the complaint be

upheld, as she was satisfied that ARAG had acted fairly and reasonably and in line with the policy terms.

Mr K2 did not accept the Investigator's assessment, so the complaint was passed to me for review.

In the meantime, Mr K2 made a number of points in response to the Investigator. I have considered everything Mr K2 has said and have summarised his main points below:

- The Investigator has made factual errors and an unreasonable interpretation of the policy.
- ARAG's position on ownership is illogical and contradictory. ARAG accepted insurance premiums from the estate and thereby accepted the estate had a valid insurable interest in the property. To then deny a claim because ownership of the property had not transferred to Mr K2 is contradictory.
- In any case, he became the registered owner on 30 January 2025, before ARAG made its decision on the claim.
- The policy clearly covers an *"event which causes or could cause physical damage"*. ARAG's argument that cover is not for "preventative measures" is a direct contradiction of the policy wording, which is clearly designed to prevent impending harm. As it will impact the value of the property, this would amount to damage.
- The interpretation of *"legal nuisance"* and *"trespass"* is too narrow. A legal nuisance is an unreasonable interference with the use and enjoyment of property. The proposed action sought to permanently remove the right to use and enjoy a communal area. Which would therefore amount to nuisance.
- The policy exclusion for *"a contract entered into by you"* has also been misapplied. This was not a dispute about the terms of his lease with the management company, rather it is a dispute to protect our property from the actions of a third party. He needs cover to defend the rights granted by the lease, not to challenge the lease itself.
- And to seek to apply this exclusion to any leasehold property would render the property protection cover useless for any leaseholder. This would be unfair.

I issued a provisional decision on this matter earlier this month. I provisionally determined that the complaint should be upheld. I have copied my provisional findings below:

"The policy in question here was in the name of the executors of Mr K's estate. The policy provided cover for various legal disputes, including property dispute. The property protection section of the policy states:

"We will pay costs and expenses for your legal rights in a civil dispute relating to material property you own (including your home) or material property you are responsible for, following:

- a. Any event which causes or could cause physical damage to such material property, provided that the amount in dispute is more than £100,*
- b. Any legal nuisance any legal nuisance (meaning any unlawful interference with your use or enjoyment of your home or some right over, or in connection with it) or trespass, provided that you are responsible for the first £250 of any claim*
- c. A trespass."*

It also [sets out some] exclusions [to this section of cover] as follows:

"We will not pay for:

any claim relating to the following...

- a. a contract entered into by you;*
- b. any building or land other than your home”.*

As mentioned, the policy was in the name of the executors of Mr K's estate at the time the claim was made. I assume, although I've not seen evidence to support this, that the policy was in Mr K's name and then changed when the insurers were notified of his passing.

In any event, the executors were entitled to make a claim under the policy and, as Mr K2 has said the estate had an insurable interest. I do not think it matters when the property was transferred to Mr K2's name, as I am satisfied that he had the right to claim and enforce property rights in his capacity as executor of the estate of Mr K, and/or as registered owner of the property.

The dispute here is about another leaseholder trying to establish a sub-lease for exclusive use of communal areas.

I have therefore carefully considered if this falls within any of the insured events listed in the property protection section of cover cited above.

The policy term set out above covers physical damage. While I note the comments made by Mr K2 about the damage to the value of the property, I do not think this would be interpreted as physical damage. I also do not think the proposed action by the neighbours would amount to trespass.

However, I do consider that removing access, use and enjoyment of a communal area would fall within the cover for nuisance. “*Nuisance*” is set out in the policy as being “*any unlawful interference with your use or enjoyment of your home or some right over, or in connection with it*”. I think the action to remove access to what Mr K2 has said was previously a communal area would amount to an interference with a “*right over, or connection with*” the property.

ARAG said the policy would not cover this, as it is not intended to prevent an interference that has not happened yet. I do not consider this to be a fair and reasonable interpretation of this term. As Mr K2 has mentioned the clause relating to property damage suggests it would be utilised to prevent damage occurring, so a preventative element is covered. I also think that where an action is planned that would cause an interference, it would be unreasonable to insist on a policyholder allowing that interference to happen before being able to claim.

Having determined that the claim does fall within the cover set out above, I have also considered whether the exclusion to that section of cover applies.

ARAG has said that as the claim is about a leasehold property, it would be caught by the exclusion of claims relating to a contract. I do not think it is a reasonable interpretation or application of this exclusion. While a lease is fundamentally a contract, I do not consider that in the context of a policy term providing property protection legal expenses cover, this exclusion can reasonably be interpreted to mean that any claim from a leaseholder is excluded. If that is what is intended, then it would need to be made much clearer than this.

In any event, even if for argument's sake I am wrong about that, I do not think this claim is about the lease. As Mr K2 has said, the dispute is not about the terms of the

lease for the property owned by Mr K (and now him) but a dispute about plans by a neighbour that would interfere with the enjoyment and use of the property, which happens to be owned under a lease.

Having considered everything carefully, I therefore consider that ARAG should not have rejected the claim for the reasons it did. I have to therefore consider what needs to be done now to put that right.

Mr K2 has incurred legal costs of £1,325 plus VAT corresponding with the managing agents and understandably wants this reimbursed. However, I have no evidence as to whether this claim would have met other terms of the policy, including having reasonable prospects of success. I do not therefore consider I can reasonably require ARAG to reimburse these costs on the evidence I have currently.

I think ARAG should therefore proceed to assess the claim to determine if it meets the other terms of the policy. If it does, it should consider the costs Mr K2 incurred already and confirm if cover is provided for any further action required.

I also think ARAG should pay compensation of £250 for the trouble caused to the estate of Mr K by the incorrect rejection of the claim in early 2025.”

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

ARAG has confirmed it has nothing further to add.

Mr K2 has acknowledged my provisional decision, and he has confirmed that he accepts it.

Mr K2 has also said that the legal intervention funded by the estate was successful and stopped the neighbour's attempt to appropriate the communal areas and this therefore proves that the claim had reasonable prospects of success.

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.

As ARAG has not provided any further information, I see no reason to change my provisional findings that the claim falls within the property protection section of cover and should therefore have been assessed against the remaining terms of the policy.

I note Mr K2's comments that his solicitors were successful in stopping the plans of the neighbour. I cannot say that this means that the claim would have been deemed to have had reasonable prospects of success at the time it was submitted, as I cannot make that assessment myself. I therefore remain of the opinion that ARAG should assess the claim now against the remaining terms of the policy, bearing in mind this information. While I cannot make a binding direction about this, I think ARAG should also consider whether interest should be paid on any fees to be reimbursed. The estate can complain again if it is not happy with the outcome of ARAG's assessment of the claim.

I also remain of the opinion that ARAG should pay the estate of Mr K the sum of £250 for the trouble caused by the incorrect rejection of the claim in early 2025.

My final decision

I uphold this complaint against ARAG Legal Expenses Insurance Company Limited and require it to assess the claim made by the estate of Mr K against the remaining terms of the policy. If it is determined the claim should have been accepted, it should consider the legal fees Mr K2 has incurred and whether interest should be added to any fees to be reimbursed.

I also intend to require ARAG Legal Expenses Insurance Company Limited to pay the estate of Mr K £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr K to accept or reject my decision before 27 January 2026.

Harriet McCarthy
Ombudsman