

## The complaint

Mr E complains that ARAG Legal Expenses Insurance Company Limited failed to obtain a barrister's opinion and provide cover for a claim on his legal expenses insurance policy.

## What happened

1. Mr E was involved in a legal dispute that went to court. He was unhappy with the way his barrister conducted the trial and wanted to pursue a claim for professional negligence. He instructed another barrister (who I will call "Mr C") to advise on this, but then said Mr C had also been negligent. Mr E made a claim on his policy to pursue a negligence case against Mr C.
2. ARAG obtained legal advice that said the claim didn't have reasonable prospects of success. So it declined the claim.
3. Mr E obtained a barrister's opinion that said he was likely to be successful, and he complained about ARAG's decision. That complaint was referred to this Service and was resolved in June 2024. ARAG agreed to instruct counsel to advise on the prospects of success, and to refund to Mr E the fees he had paid to obtain counsel's opinion (which it has since paid).
4. In August 2025, Mr E contacted this Service again to say ARAG had not obtained another counsel's opinion and there had been no further progress with his claim.
5. ARAG said it had contacted Mr E in August 2024 with three questions, including a request to confirm the up to date position on his legal case, but didn't get a reply on this point. It didn't hear from Mr E again until August 2025. ARAG said it couldn't proceed without his instructions, but it appreciated he's vulnerable and accepted it should have dealt with things better. ARAG offered £500 compensation.
6. Our investigator said it wasn't reasonable for ARAG to leave things, and not follow it up with Mr E, until August 2025. It had had the opportunity to obtain further legal advice but hadn't done so. As Mr E had provided a favourable opinion, it should cover his legal costs. She also asked it to increase the compensation to £750.
7. Mr E then said his legal case against Mr C had been thrown out by the court, so he could no longer pursue it. He also raised other points about his legal action and the way ARAG had dealt with a number of claims on his policy.
8. The investigator said she was only looking at this one issue, about the failure to obtain counsel's advice after August 2024. She said it was still her view that ARAG should cover the legal costs Mr E had incurred relating to this, together with compensation of £750.
9. ARAG accepted the investigator's view but Mr E remains unhappy. So I need to

make a 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.

10. Mr E has been involved in legal action dating back some years. He has referred to various issues and claims and would like us to look into everything, but this complaint only concerns a case he wishes to pursue against a barrister for negligence.
11. I appreciate that the various claims are connected in some way. Mr E feels there has been misconduct by ARAG and others over the years. This is a very important matter for him and he feels strongly about this. But we have previously dealt with complaints about earlier events. I can't comment on issues that have been dealt with in previous complaints. And I have no power to consider what happened in his court cases, or the actions of the solicitors or barristers who have been involved over the years.
12. The only thing I can deal with in this decision is the complaint about what happened in this particular claim, after ARAG agreed to obtain counsel's advice in August 2024.
13. When considering this, I've taken into account relevant industry rules and guidance which say insurers must deal with claims promptly and fairly; support a policyholder to make a claim and consider if someone is in a vulnerable situation when dealing with them; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.
14. The policy terms say cover will be provided if the claim has reasonable prospects of success. Almost all legal expenses policies say cover will only be provided if a claim is likely to be successful. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed.
15. ARAG agreed to obtain a barrister's opinion on the prospects of success for a case against Mr C. It should have obtained any information it needed from Mr E and then instructed counsel to advise. Instead, nothing happened between August 2024 and August 2025. While ARAG said it needed more information from Mr E, it should have obtained that promptly. It wasn't reasonable for ARAG not to follow this up, especially given Mr E's vulnerability.
16. ARAG has accepted this and agreed to cover Mr E's legal costs of the claim against Mr C, together with the recommended compensation of £750. But Mr E remains unhappy.
17. He has said his case has now been struck out, so he can't pursue it. There's no evidence showing his case was struck out as a result of ARAG not covering his costs. I can't conclude, on the evidence I have, that any error by ARAG caused any additional loss, other than the fact Mr E had to pursue this claim without the benefit of cover. So if he has incurred legal costs, those should be covered.
18. Mr E has also raised a concern about a conflict of interest concerning the judge that dealt with the court case. I can't comment on what happened at court. Any concern about that would be a matter for the judge concerned. It does not affect

the way ARAG has dealt with this aspect of the insurance claim since August 2024, which is all I can consider. I'm only looking at the failure to obtain counsel's advice on the case against Mr C, and nothing else.

19. In relation to what I can look at, I'm satisfied there was delay. ARAG has acknowledged this, and that it didn't take account of Mr E's vulnerabilities when dealing with this matter. In the circumstances, it's fair that ARAG covers Mr E's legal costs relating to his claim against Mr C, and compensates him for the distress and inconvenience he was caused. ARAG has agreed to this. I know Mr E thinks this doesn't cover everything but, as I've explained, I can't review the whole history of his various legal claims.

### **My final decision**

I uphold the complaint and direct ARAG Legal Expenses Insurance Company Limited to do the following:

- Subject to Mr E's legal representative providing a chronology of events since August 2024 and a breakdown of the work done, cover his reasonable and necessary legal costs for the claim against Mr C up to the indemnity limit and, if Mr E has already paid any of the costs, pay interest on those costs from the date he paid them to the date of settlement at 8% a year simple.\*
- Pay compensation to Mr E of £750 for the distress and inconvenience caused to him.

\*If ARAG Legal Expenses Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr E how much it's taken off. It should also give Mr E a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 11 March 2026.

Peter Whiteley  
**Ombudsman**