

## **The complaint**

Mr M, Ms M and Mrs P complain ARAG Allgemeine Versicherungs-Aktiengesellschaft (ARAG) withdrew legal expenses cover when the limit of indemnity was exceeded.

Mr M makes this complaint on behalf of himself, Ms M and Mrs P. For ease, I'll mainly refer to Mr M in my decision.

## **What happened**

Mr M had legal expenses insurance (LEI) under a farm policy with ARAG. In around October 2019 Mr M made a claim on the policy to cover the costs of defending legal proceedings by a third party relating to an agricultural tenancy. ARAG accepted the claim and appointed panel solicitors to act on Mr M's behalf.

During a review, ARAG noticed the costs that had been incurred had exceeded the limit of indemnity. In June 2022 they let Mr M know they were withdrawing cover. They said they'd pay all the legal costs to date and support Mr M with the reasonable costs of negotiating a settlement as a gesture of goodwill. But they wouldn't fund the claim going forwards.

Mr M complained. ARAG apologised and accepted responsibility for not making Mr M aware that for claims under the relevant section of the policy they wouldn't pay more than £10,000. They said that although the policy would have set out the limits of indemnity that applied, it had been up to them to let Mr M know about any "nuances" to cover. Mr M had incurred over £31,000 in legal costs. ARAG agreed to pay all the costs incurred; to fund an attempt to settle the legal claim on the best possible terms; and to pay £500 for the distress and inconvenience their mistake had caused.

Mr M didn't accept ARAG's outcome and brought his complaint to the Financial Ombudsman Service. He wanted ARAG to continue to fund the claim until it had been concluded.

Our investigator didn't uphold the complaint. She said, broadly, Mr M wasn't entitled to further funding under the policy; he'd benefited from more cover than the policy provided; and ARAG's offer to pay the reasonable costs of negotiating a settlement and compensation was fair.

Our investigator clarified with ARAG what their offer of support with a negotiated settlement meant. They explained they'd help Mr M, with the assistance of the panel solicitors, to settle the claim. And they said since the solicitors would stipulate the costs they'd need to pay, Mr M wouldn't need to worry about ensuring the costs were reasonable.

Mr M didn't agree with our investigator's view. He said, broadly, his opponent had put forward some settlement proposals at the outset; having sought legal advice and on the understanding all costs were covered, he decided to pursue the case; the estimated costs of taking the case to court had reached £40,000; and the third party required more than double what they asked for previously to settle the claim; if Mr M had known his costs wouldn't be covered, he would have accepted the offer to pay a lump sum; and he hadn't received the £500 compensation ARAG had offered.

Since Mr M's complaint hasn't been resolved, it's been passed to me to review afresh.

### **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.

In line with Financial Conduct Authority rules we expect an insurer to deal with claims promptly and fairly and not to decline a claim – or withdraw cover - unreasonably.

Since ARAG have accepted responsibility for failing to let Mr M know about the limit of indemnity, and they agreed to meet all the costs he'd incurred to the date they withdrew cover, I don't need to consider those issues. I'll therefore focus on what's in dispute. That's whether, even though there's no contractual responsibility for ARAG to continue to fund the dispute, they should have done, and/or whether the proposals ARAG have put forward to resolve the complaint are fair and reasonable.

In summary, Mr M says:

- The third party put forward options at the outset. One was for Mr M to pay them a lump sum to settle their claim, and another was to pursue the case.
- Having sought legal advice and in reliance on information from ARAG that all his legal fees would be covered, he decided to pursue the case.
- In deciding to go ahead, and assessing his financial position, he didn't factor in his legal costs since he understood ARAG would cover them all. If he'd known they wouldn't, he would have made the lump sum payment the third party had asked for.
- Mr M now knows the costs of taking the matter to a hearing will be around £40,000. But it's too late to accept the offer as the third party requires more than double to settle the case now.
- The £500 compensation ARAG offered isn't enough to reflect the sleepless nights and anxiety Mr M, Ms M and Mrs P have suffered. And ARAG haven't paid it in any event.

Bearing the above in mind, it's relevant to look at the offers the third party made, the advice Mr M was given as the case progressed and whether Mr M made decisions on the understanding all his costs, and those of the opponent if he lost the case and had to pay them, would be covered. Unfortunately, I have limited information about the legal advice despite asking the parties to provide it. So, I've come to my conclusions doing the best I can, balancing the evidence that's available.

From what I can see, the third party's initial offer was made when ARAG had declined the claim under the policy and Mr M's own solicitors were acting for him. Mr M couldn't reasonably have expected then that his legal costs would be covered by ARAG if he didn't accept the offer. His decision not to accept the offer is most likely to have been made on the understanding he would be responsible for costs if the case carried on.

The panel solicitors seem to have taken over advising Mr M in around April 2020. Their initial report to ARAG put prospects of success at 75% on the basis the third party wasn't able, on the information provided, to establish his case. In July they still thought the defence had sufficient prospects of success. They asked for authority to instruct a forensic accountant and counsel. They estimated their total costs to that stage would be between £5,000 and £10,000.

Given the advice on prospects of success and that the anticipated costs fell within the limit of indemnity, on balance I don't think Mr M is likely to have come to a different decision at this point about how to progress the case even if he'd known about the limit on costs. It was reasonable to get the evidence and advice to establish the strength of his defence.

Counsel advised in around August 2020. He said, in summary, the case was complicated, in its very early stages, further enquiries should be carried out and it was sensible to instruct the forensic accountant as the panel solicitors were proposing.

ARAG were prepared to carry on funding the case after that. If the professional advice hadn't been supportive, ARAG are likely to have withdrawn cover at that stage. That's because the terms and conditions of the policy required the case to have reasonable prospects of success – more than 50% - for cover to continue.

It's reasonable to think Mr M is most likely to have approached any decision about the case at this stage on the basis his future costs would be paid by ARAG. And Mr M says he would have accepted the offer the third party had made if he'd known the true extent of cover.

It's unclear if the February 2020 offer was still on the table by then. Even if it was, I'm not persuaded Mr M would have accepted it. If the prospects of successfully defending the case were reasonable, I think it's more likely, on balance, Mr M would have carried on with defending it or tried to negotiate a more favourable deal, even if he'd understood he'd have to meet his own costs going forward. That's because the sums at stake and potential outcome of the legal dispute were significant even at that stage. And, from what I understand, he's continuing to defend the case now even though he's funding it himself.

In all the circumstances, I'm not persuaded Mr M would have settled the case even if he'd understood sooner that not all of his legal costs would be covered. However, even if I'm wrong about that, I don't think it would be fair to hold ARAG responsible for any additional costs of settling the claim now. I'll explain why.

As far as I know, the dispute hasn't been settled so it's not possible to say Mr M is any worse off. Even if the dispute had been settled on less favourable terms than the 2020 offer, it would be too speculative to say the additional costs of settlement flowed from ARAG's mistake about the extent of cover under the policy. Those costs could be affected by many factors such as the third party's expert's advice, changes in property values and the requirement for Mr M to carry out works that hadn't been anticipated. And since ARAG agreed to pay all Mr M's legal costs to the date they withdrew cover, he isn't out of pocket there.

It wouldn't be reasonable to expect ARAG to continue to cover the claim. The policy provided limited cover. ARAG has met costs considerably higher than the cover provided. And they reasonably offered to cover the panel solicitors' additional costs of negotiating a settlement. I think that was fair in all the circumstances. I understand Mr M's decision to appoint his own solicitors instead. He was entitled to make that choice. But it doesn't follow that ARAG should cover his ongoing costs.

I note ARAG offered compensation of £500. I understand Mr M, Ms M and Mrs P will have been shocked and disappointed when they found out the claim wasn't covered. But ARAG acted promptly and fairly following their review to offer a way of taking things forward for them. Even though that wasn't acceptable to Mr M, it was a fair response, as I've explained. And I think the £500 compensation fairly addresses the distress they will undoubtedly have felt when ARAG told them about the position on cover and the inconvenience of taking steps to appoint their own solicitors afterwards.

Bearing everything in mind, whilst I understand Mr M, Ms M and Mrs P will be disappointed, I'm not persuaded it would be fair to uphold this complaint.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, Ms M and Mrs P to accept or reject my decision before 14 December 2023.

Julia Wilkinson  
**Ombudsman**