

# A guide to your Legal Expenses cover



# Your Legal Expenses guide

The legislation relating to business is constantly changing and few companies have the in-house resources or expertise to defend themselves against a costly legal dispute.

ARAG helps NICMA members to avoid potential legal disputes through our expert legal advice helplines and legal services website, and should the worst happen, we provide comprehensive legal expenses insurance to help protect their legal rights.

This is a guide to the cover available.

## Employment dispute cover

Employee disputes can be stressful, time consuming and very costly to both the finances and reputation of a business. Legal expenses cover pays the legal costs of defending your businesses in a range of employment disputes, for example where it is alleged you have breached employment laws or contractual rights of your employees. Compensation awarded against an employer are covered provided that there is a reasonable prospect of success.

## Employment dispute scenario (1)

The insured was subject to a claim for unfair dismissal and unlawful deduction of wages by one of their former nursery assistants. We appointed a solicitor to work on the insureds behalf and they assessed the chances of success as being 60-70%.

Mediation was attempted but the matter could not be settled. The matter was quite complex and was listed for a two day trial, the insured won at Employment Tribunal and we paid their legal costs which came to £22,300.







## Employment dispute scenario (2)

The insured contacted us when an ex-employee claimed that they had suffered discrimination on the grounds of religion. The case was high profile and received media attention which led to the insured receiving threatening and offensive correspondence. Their ARAG policy provided Crisis Communication cover which paid the fees of a public relations expert chosen by ARAG to manage media communication to help them put their side of the story.

As it was not possible to arrive at a settlement with their ex-employee through mediation a claim was filed at tribunal. The solicitor appointed by ARAG assessed the chances of winning the case at 60%.

Due to the complexity of the case it was listed for a 4 day hearing. The case was settled in the insured's favour and the legal costs of £21,000 were paid by the insurer.

## Employment restrictive covenant cover

Businesses sometimes have restrictive covenants in employment contracts to protect their business interests should an employee or ex-employee attempt to trade in competition with, or work for a competitor. Such contracts can be tricky to draft correctly and legal disputes are likely if a mistake is made. Legal expenses cover pays for the costs involved in resolving legal disputes that arise from your restrictive covenants.

## Employment restrictive covenant scenario

The insured hired a new member of staff in a very competitive industry through an open and transparent recruitment process. The new staff member's former employers however alleged that the insured breached an employment restrictive covenant and "poached" the employee. The matter was referred to ARAG who appointed a specialist solicitor to handle the matter. Upon investigation it was found that the employee's restrictive covenant was unreasonable, as it restricted their prospects of finding similar work beyond 18 months. The matter was settled without litigation and ARAG settled the solicitor's fees of £1,245.

## Tax disputes cover

No business welcomes an unexpected visit from HMRC. And any investigation by HMRC is likely to be lengthy and expensive. A tax advisor or accountant will represent our policyholder's business if a dispute arises following a compliance check by HMRC. They will also deal with HMRC if there is a full or aspect enquiry into the business, as well as a range of appeals.

## Tax disputes scenario

The insured received a letter from HM Revenue & Customs (HMRC) confirming that they intended to make an enquiry into the insured's tax return for the previous year. The insured contacted ARAG who passed the claim on to a tax consultant. After extensive investigation, HMRC confirmed that the tax return was in order with appropriate tax paid. ARAG settled the tax consultant's invoice for £6,750.



## Property protection cover

Premises are vital to the smooth running of any business. Nuisance, trespass or damage to a policyholder's property by another party could put a substantial strain on their ability to operate effectively. ARAG policies pay for the legal costs of protecting members' rights and claiming compensation if necessary.

## Property protection scenario

The insured contacted ARAG when a neighbour began causing problems for the day nursery. These included shouting at female members of staff after dark, slamming doors and complaints to the council about noise. The neighbour complained to environmental health about the sounds of children playing outside, to Ofsted regarding the quality of care and the condition of the garden and he racially abused a parent as she was picking up her child. This resulted in a warning from police.

ARAG appointed solicitors who wrote a strongly worded letter to the neighbour. No response was received and the intimidating behaviour continued. Mediation between the parties was suggested, this appeared to have been successful as the incidents stopped. The insured was very pleased and relieved that further litigation was not necessary, ARAG paid the costs of £900.

## Legal defence cover

All businesses must operate within a complicated framework of legislation. ARAG's legal services website

can help businesses remain compliant and the ARAG cover will also pay the legal costs of defending insured businesses and where applicable employees, business partners or directors from criminal prosecutions, including motoring offences.

## Executive suite

We offer a suite of covers to protect the principal, executive officers, directors and partners of your business.

- An HMRC enquiry into the executive's personal tax affairs.
  - Motoring prosecution defence for personal, social or domestic use.
  - Personal identity theft assistance and resolution service.
  - Mediation costs up to £25,000 to resolve a dispute between business partners that arises from the terms of their partnership agreement.
- Crisis communication (as described below) is available for matters occurring in an executive's private and personal capacity that cause adverse publicity or reputational damage.

## Legal defence scenario

Following an accident at the our insured's pre-school the Health & Safety Executive charges were brought for breaches of health and safety regulations. ARAG were advised of the claim and instructed a specialist solicitor who successfully defended the charges, ARAG settled the solicitor's fees of £2,350.



## Compliance & regulation cover

Businesses, face ever increasing regulatory burdens from, Governmental and professional bodies as well as regulators such as local Health and Social Care Trusts. Legal costs to appeal against the terms of statutory notices issued against an insured's business or to defend them against civil action under the Data Protection Act are covered. ARAG can also help if a childcare provider is investigated by a regulatory body or if they have to attend a professional or regulatory disciplinary hearing. Where we have defended Health and Safety Executive enforcement action that results in Fees For Intervention being charged, these fees are covered

## Compliance & regulation scenario

Our insured ran a nursery. A number of parents alleged their children had suffered harm whilst in the nursery's care. An investigation was immediately undertaken by the police that involved four of the nursery's employees being interviewed under caution.

Due to the seriousness of the allegations, the nursery was closed following the suspension of their registration by Ofsted. ARAG was approached to arrange legal representation for the employees at their police interviews and also to assist the nursery owners with the Ofsted suspension.

Following ARAG's representation at police interviews, no further action was taken. The remainder of the case was referred to a partner of the firm, who commenced work to lift the suspension of the nursery. Solicitors recommended that an experienced barrister, with suitable expertise in such matters, be instructed.

It was established that there were reasonable prospects of successfully lifting the suspension on the nursery and the insured cooperated throughout. Recommendations were that the owners engage with Ofsted to identify areas of their business that needed addressing; this included employing new staff to split the workload and ensuring that all accidents were reported promptly and followed up. Their recommendations, together with Ofsted's input saw the nursery reopen with a limit on the number of under - two's they are able to accommodate.

Costs met by ARAG: £26,000

## Crisis communication cover

In an increasingly media orientated world, adverse publicity can have a devastating financial impact on a business. Legal expenses cover pays up to £25,000 in professional fees to provide expert advice to help manage communication effectively in times of crisis. This can include drafting a media statement as well as preparing suitable communications for staff and customers or suppliers.

## Crisis communication scenario (1)

A nursery contacted ARAG after a child in their care sustained a minor injury when a piece of playground equipment collapsed on them. Even though this turned out to be a manufacturing fault with the equipment, the angry parent concerned had already generated adverse publicity for our insured in the local press. ARAG appointed a specially selected expert PR agency, to handle the press interest and draft a press release clearly stating the facts of the case and clearing our insured. The insurer paid £1,262 PR fees available through Crisis Communication assistance.





## Crisis communication scenario (2)

The insured contacted ARAG after their pre-school was wrongly named in a local newspaper as the potential source of a local E.coli outbreak. The insured was put in touch with a top PR consultancy firm, who are experts at handling difficult PR situations. Following extensive communication with the paper concerned a correction and apology were printed clearing the insured's name. The £1,262 costs of the Crisis Communication assistance were paid under the legal expenses cover.

## Contract & debt recovery cover

Any kind of dispute or problem with a supplier or customer can really have a significant impact on a business. If this happens ARAG will help members to resolve the situation as quickly as possible and pay any legal costs involved.

Problems with cash flow are very common and making sure customers pay promptly is essential. If members have a late payment issue, we will negotiate to resolve the situation as quickly as possible.

## Contract dispute scenario

The insured found themselves in dispute with a builder employed to create a new playground at their premises who they thought had overcharged for their work. The other side had an outstanding invoice which they pursued aggressively. The insured contacted ARAG who confirmed cover for the claim under Contract & debt recovery cover. ARAG appointed solicitors to act in order to try to resolve the matter as quickly and amicably as possible, the solicitor entered into mediation with the builder. The claim was successfully settled at that stage in favour of the insured. The supplier agreed to write off sums they had previously stated were outstanding with the insured receiving a significant settlement figure in lieu of overpayments. The insurer paid all the legal costs incurred by the insured which came to £2,512.

## Debt recovery scenario

The insured owned a nursery school. One of their parents owed £1,952 in unpaid fees and despite repeated requests, failed to pay. They turned to ARAG after failing to get a response to fee demand letters available from the Legal Services website. Proceedings were issued and judgment obtained. High Court bailiffs were instructed to seize goods to the value of the judgment.

Costs met by ARAG: £655

# Legal advice - What are the benefits?

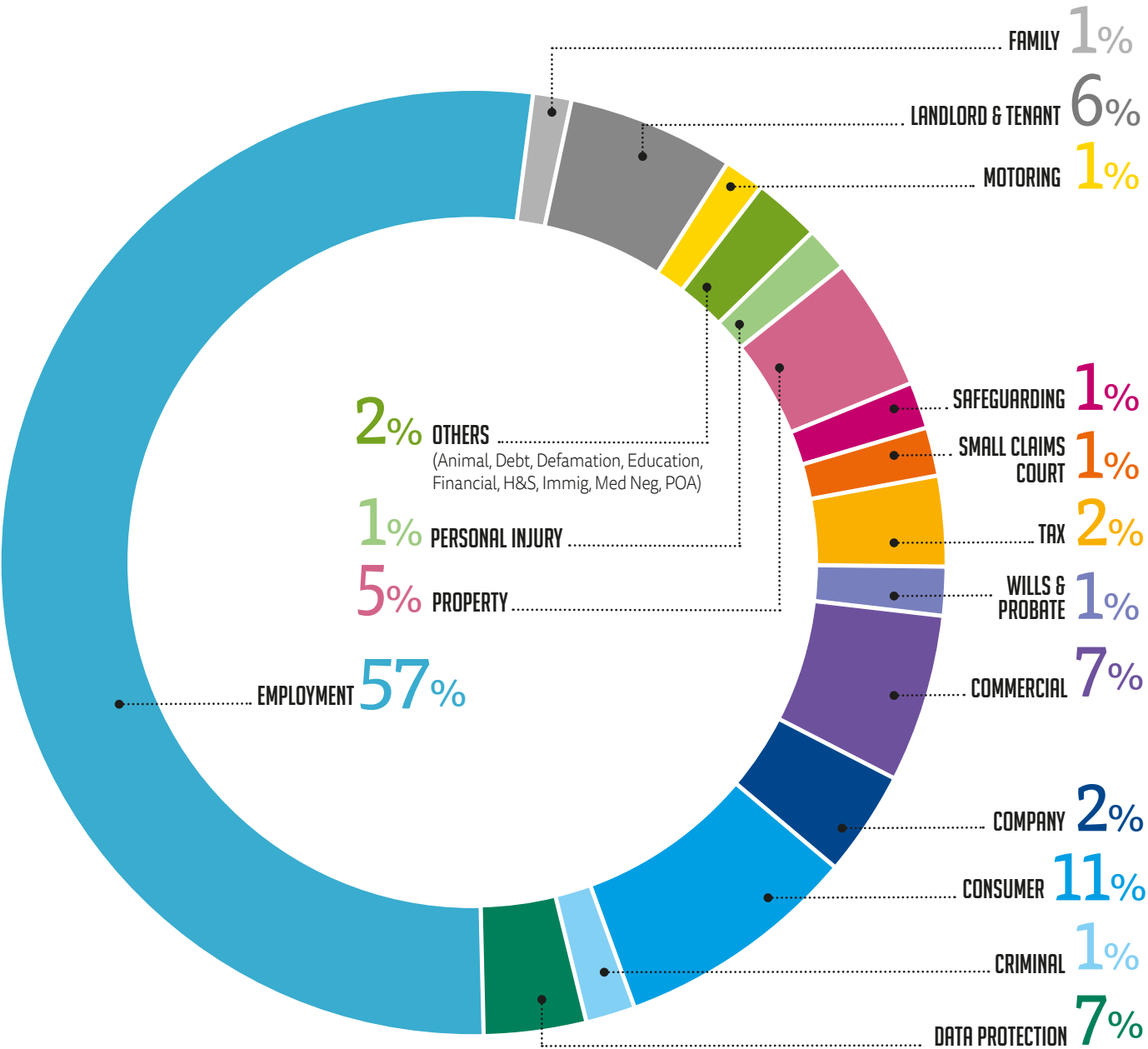


## Helplines

Policyholder's can call the legal advice line and get immediate advice on legal problems affecting their business 24/7. They can also obtain tax related advice from the tax helpline or use the counselling line which is available to policyholder's employees and their families.

## What areas are customers most interested in?

ARAG Volume by Category



## Legal advice scenario

**A employee has come to me and said they don't think they have been paid the correct amount. I don't want to end up in an employment dispute, what should I do?**

The best thing to do is sit down with the employee and go through their pay and hours and see if there has been an error.

## Legal advice scenario

**I have several children that I child mind on a regular basis. One of the parents has reduced their working hours and has left without paying for their last two weeks of childcare or any notice period. What can I do to recover the money I'm owed?**

If you have a contract with the parents that clearly sets out the terms and conditions including the notice period you stand a good chance of being able to recover the debt. If you do not have a contract with the parent it may be more difficult to recover the money owed on the notice period.

The first thing you need to do is use the Debt Recovery letter on our Legal Services website which is easy to access and free to use. If this doesn't work you will need to make a claim under your legal expenses insurance to to recover the debt.

## Legal advice scenario

**We have just had a child join our nursery with a serious nut allergy, what steps can I take to reduce any liability risks?**

The best thing to do in this situation is to review your food safety policy and ensure it is robust. Then check that all staff, in particular any that deal with food preparation, are aware of the policy and follow it at all times. Also ensure that all staff are aware of this child's specific allergy and receive any additional training that may be required.







## Legal advice scenario

### **A neighbouring business premise is starting to encroach on our playground, what can I do?**

First you need to find the title deeds to your nursery and see what they say about your boundaries. You need to consider how long this has been happening and whether there is a permanent structure like a fence on the boundary. It may be worth asking for a surveyor's opinion.

If after investigating you think you may have evidence of a boundary infringement please come back to us and we will tell you if you have a potential claim.

## Legal advice scenario

**We have an employee who has been ill for about a year after 9 years' service. He returned to work on reduced hours after meeting with managers. The employee's GP agreed that he could increase his hours some weeks later, however as he had a few health setbacks our insured had declined the request and then instigated an Occupational Health Report. The employee had a fall before the Occupational Health meeting so the report was negative. The employee has asked to be reassessed and his GP has provided a fit for work note. The employee Pain Clinic and Physio have issued reports confirming he can increase his hours. We are in breach of any employment law. What should we do?**

We advised that the insured does have a duty of care towards their employee and they should risk assess the role and make reasonable adjustments to allow the employee to return to work full time.

# Benefits of ARAG

## Legal website resource

The problem of compliance for businesses is compounded by the cost of getting legal advice and help to resolve a legal issue. In fact, the Legal Services Board survey\* found that a staggering 51% of businesses try to deal with the legal problem on their own without any external expert help and guidance, leaving themselves vulnerable to a number of risks.

The legal website resource provides an affordable solution to help policyholder's manage a range of legal needs, easily and conveniently online.

The following products do not include access to the legal services website: Holiday Play, Mobile Creche, Toy Library, Nanny and Adultcare

### Top 15 most popular documents

Employment agreement

Employment statement

Employee handbook

Debt collection letters for unpaid invoices

Privacy policy for a website

Job offer letter

Health and safety compliance review and policy creator

Terms and conditions for website selling consumer goods and/or services

Consultancy agreement

Non-disclosure agreement

Terms and conditions for the back of a goods order form

Purchase order

Flexible Working Letter

Agreement for the supply of goods (non-retail)

Fixed-term employment agreement

\*'In need of advice?' – Finding of a small business legal needs benchmarking survey – Legal Services Board, 2013





## What's included in the service?

- ✓ Documents - an easy to use document preparation system which includes hundreds of customisable legal documents, contracts, agreements and letter templates
- ✓ Review - lawyers available to check and if necessary amend documents created on the system
- ✓ Guides - comprehensive, jargon-free guides to business law
- ✓ Updates - regular updates on business laws and regulations via e-bulletins

## How does it help businesses?

- ✓ Comply with employment and health & safety laws
- ✓ Take steps to recover debts legally
- ✓ Make sure contracts and terms of trading are watertight
- ✓ Avoid financial losses when trading online
- ✓ Get to grips with their legal rights and obligations
- ✓ Save £100s, if not £1000s on legal fees



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